

**Appendix: Narrative**

1. On 28 February 2021, the Engineer wrote to the Contractor rejecting its revised programme, noting an inconsistency between the software the Contractor was using to evaluate its progress and observations on-site. This includes submission of low-value IPCs and inadequate resources, and recommends increasing resources. (Exhibit 1)
2. Also on 28 February 2021, the Engineer wrote to the Contractor, rejecting its claim for force majeure as it had not been notified within 14 days of becoming aware of the event. (Exhibit 2)
3. On 7 March 2021, the Engineer wrote to the Contractor, reiterating its belief that the Contractor's methodology to evaluate its progress was flawed, and requesting that it deploy more resources. (Exhibit 3)
4. On 22 March 2021, the Engineer wrote to the Contractor, stating that its revised programme was insufficient, as it only discussed the completion date, not sequencing or the method of preparation, and reiterating its belief that progress had not been achieved. (Exhibit 4)
5. On 28 March 2021, the Contractor wrote to the Employer stating that Interim Payment Certificate #36 was due, in a sum of AED 9,704,063.07. (Exhibit 1) On 4 April 2021, the Contractor wrote to the Employer stating that IPC #36 had not been paid, and therefore that it could not pay its subcontractors. The Contractor instructed the Employer to pay immediately in order to avoid interruptions, and stated that it would not be responsible for delays, reductions in performance, and suspension of performance. (Exhibit 5)
6. On 4 April 2021, the Engineer wrote to the Contractor, stating that the force majeure issue had already been dealt with in the February 2021 correspondence. (Exhibit 6)
7. On 4 April 2021, the Contractor wrote to the Employer stating that IPC #36 was overdue, and that it would not be held liable for reduction or suspension of the Works. (Exhibit 7)

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8. On 5 April 2021, the Employer wrote to the Contractor, stating that it had given only 4 days' notice, but that 21 days' notice was needed to effect suspension of works properly under the contract. (Exhibit 8)
9. On 18 April 2021, the Engineer wrote to the Contractor, stat that it had not provided a sufficient revised programme; it had declined to provide information regarding critical MEP testing and commission. (Exhibit 9)
10. On 19 April 2021, the Contractor wrote to the Employer stating that it was unable to pay its subcontractors and suppliers due to the Employer's non-payment, and that it would reduce the rate of works from 22 April 2021. It also reminded the Employer that the Employer would be liable for remobilization delays and costs. (Exhibit 10)
11. On 22 April 2021, the Contractor wrote to the Engineer to explain to the Engineer that the delay in the payment under IPC #36 would create Risk Event #17, and that it would analyse the intermediate and final impact. (Exhibit 11)
12. On 29 April, the Engineer responded to the claimant, stating that it would await details regarding impact. It reiterated that the Contractor was required to demonstrate demobilization after 22 April 2021 in order to demonstrate remobilization. (Exhibit 12)
13. On 29 April 2021, the Contractor wrote to the Employer, stating that IPC #36 was overdue and that IPC #37 was now due. The Contractor requested that the Employer release both IPC #36 and PIC #37 "to enable Contractor to resume normal working as soon as is reasonably practicable." (Exhibit 13)
14. On 4 May 2021, the Contractor wrote to the Engineer, enclosing an Interim Delay Impact Report, in which it outlines delays to MEP works, ID works, and others. It also noted manpower reductions. (Exhibit 14)
15. On 9 May 2021, the Engineer wrote to the Contractor, acknowledging the revised programme, but also stating that a revised programme had been required of the Contractor in February 2021. (Exhibit 15)

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16. On 20 May 2021, the Contractor wrote to the Engineer, providing an extensive Extension of Time for Completion claim with a deficit of 64 days. In this document, the Contractor repeated the correspondence cited above to show that it had been unable to release overdue payments to subcontractors and suppliers. (Exhibit 16)
17. On 23 May, the Engineer wrote to the Contractor, stating that once the delay event was concluded and upon submission of final claim substantiation, it would engage in claim analysis. (Exhibit 17)
18. On 27 May 2021, the Contractor wrote to the Employer to request that it provide reasonable evidence of financial arrangement, pursuant to Sub-Clause 2.4 of the General Conditions of Contract. (Exhibit 18)
19. On 1 June 2021, the Contractor wrote to the Employer, stating that PICs # 36, 37, and 38 had not yet been received. It also stated that it had used up and that it had reduced its rate of work. **It cited Clause 16.1, regarding the 21-day notice requirement, but did not invoke it.** (Exhibit 19)
20. On 6 June 2021, the Contractor wrote to the Engineer, citing the failure of the Employer to pay PICs #36, 37, and now 38, attaching Interim Delay Impact Report #2 (Exhibit 20)
21. On 7 June 2021, the Engineer wrote to the Contractor, stating that its Delay Impact Report #2 was non-specific in nature and required a factual quantitative record. (Exhibit 21)
22. On 13 June 2021, the Employer wrote an email to the Contractor, stating that *“our tentative payment plan is... payment to bill no 36, 37, & 38 will be settled by the end of June”*. It also stated that its discussions with its bank *“whilst very well advanced and positive, will only be finalized this coming week pending a final executive management meeting and we will keep you posted if there is any changes in the above mentioned plan.”* (Exhibit 22)
23. On 15 June 2021, the Contractor wrote to the Engineer including a detailed, if not fully explicated factual record. (Exhibit 23)



24. On 20 June 2021, the Contractor wrote to the Engineer, including its Extension of Time #10, detailing Delay Event #17, providing an extensive Extension of Time for Completion claim with a deficit of 97 days. (Exhibit 24)
25. On 23 June 2021, the Contractor wrote to the Employer repeating the sentence (without context) *"Payment to bill no 36, 37, & 38 will be settled by end of June."* Then the Contractor stated that based on this promise, the Contractor had committed to the plans of its subcontractors and suppliers. (Exhibit 25)
26. On 27 June 2021, the Contractor wrote to the Employer, stating that it was running out of essential supplies, that its equipment and plant were exposed, and that it had exhausted all methods for continuing work. (Exhibit 26)
27. On 12 July 2021, the Engineer wrote to the Contractor, stating that it was not in control of the release of funds, nor recommend the release of the Contractor's staff. All it could do was to recommend it rationalize its staff-to-labour ratios and submit them to the Engineer. (Exhibit 27)
28. On 12 July 2021, the Contractor wrote to the Engineer requesting advice regarding the termination of staff in order to mitigate its costs, despite creating prolongation costs later on. (Exhibit 21) On 13 July 2021, the Contractor sent a nearly identical letter to the Employer (Exhibit 28)
29. On 13 July 2021, the Contractor wrote a letter to the Employer stating that it had submitted a claim for EOT to the Engineer, and requesting the Employer's guidance regarding overhead costs, specifically related to manpower and whether it should reduce its staffing levels. (Exhibit 29)
30. On 18 July 2021, the Contractor wrote to the Engineer, including a revised Interim Extension of Claim, with a deficit of 126 days. (Exhibit 30)
31. On 18 July 2021, the Engineer wrote to the Contractor, stating that its claim was an ongoing event, and that it would review the final EOT claim when received. (Exhibit 31)

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32. On 25 July 2021, the Contractor wrote to the Engineer, again seeking advice regarding staffing and mobilization. (Exhibit 32)
33. On 26 July 2021, the Engineer wrote to the Contractor, deflecting its queries. It stated that commercial decisions were for the Contractor to decide. It stated that if the Employer had stated the project was overstaffed, it should follow that advice. (Exhibit 33)
34. On 5 August 2021, the Contractor wrote to the Employer, noting that now four IPCs had not been paid, stating that it may suspend or reduce its work. (Exhibit 34)
35. On 17 August 2021, the Contractor wrote to the Employer, mentioning a meeting that took place on 4 July 2021 and memorializing the discussion that took place at the meeting held on 11 August 2021. At this meeting, the Parties discussed new negotiations regarding project finance with CBD, a bank; the Contractor replaced its performance bond with a security cheque; discussions with “His Highness” regarding funding; the release of a payment of between AED 3 and 5 million; and supply chain disruptions due to lack of payment (Exhibit 35)
36. On 18 August 2021, the Contractor wrote to the Engineer, including a revised Interim Extension of Claim, with a deficit of 156 days. (Exhibit 36)
37. On 30 August 2021, the Contractor wrote to the Employer, stating that IPCs #36-40 were now overdue, that IPC #41 was due, and that a cumulative payment of AED 33,108,525.10 was now due. It stated that it would exercise its rights under Clause 16.1 and suspend works from 1 September 2021. (Exhibit 37)
38. On 6 September 2021, the Contractor sent a letter to the Employer, informing the Employer of its suspension of work on 1 September 2021. It stated that during the reduction period (misstated as the suspension period) it had sought to maintain essential works. It noted that the Employer had not responded to its letters regarding staffing. Finally, it mentioned there had been no follow up regarding finance due mid-September. (Exhibit 38)



**Applicant Details**

First Name **Connor**  
 Middle Initial **G**  
 Last Name **McQuage**  
 Citizenship Status **U. S. Citizen**  
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City

**San Antonio**

State/Territory

**Texas**

Zip

**78259-7622**

Country

**United States**

Contact Phone Number **2144057249**

**Applicant Education**

BA/BS From **University of Texas-Austin**  
 Date of BA/BS **May 2019**  
 JD/LLB From **St. Mary's University School of Law**  
<https://law.stmarytx.edu/>

Date of JD/LLB **May 20, 2022**

Class Rank **20%**

Does the law school have a  
Law Review/Journal? **Yes**

Law Review/Journal **No**

Moot Court Experience **Yes**

Moot Court Name(s) **Linda and Dave Schlueter First Year  
Moot Court Competition**

**Bar Admission****Prior Judicial Experience**

Judicial Internships/ Externships	No
Post-graduate Judicial Law Clerk	No

**Specialized Work Experience**

**Recommenders**

Britton, J ohhny  
johnny.r.britton.jr@lmco.com  
940-399-7095  
Duke, Matthew  
duke@thesouthtexasbusinesslawyers.com  
210-500-4501

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**CONNOR G. MCQUAGE**

c.mcquage7@gmail.com

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February 20, 2023

The Honorable Irma C. Ramirez  
United States District Court Northern District of Texas  
1100 Commerce Street, 1567  
Dallas, TX 75242

RE: Judicial Clerkship Opening (August 14, 2023 – August 11, 2025) (the “*Term*”)

Dear Judge Ramirez:

I am currently in my final semester at St. Mary's and am writing to apply for the position of judicial clerk for the Term. Like yourself, I have a lifelong passion to serve others. I have a background in federal service, having enlisted in the Army ten years ago, and am currently serving as a First Lieutenant in the Texas National Guard. I am eager to continue my federal service by working as your law clerk.

The federal courts particularly interest me because I will gain vast exposure to the various cases that come into federal court. I believe my broad educational background, military service, and work experience uniquely equipped me with skills that most law graduates do not possess. Not on my resume, I was a soccer referee from age twelve to twenty-four. In fact, I spent most of my weekends for those twelve years in and around Plano, on fields you may drive by every day. In a way, enforcing the rules of the game has given me insight into the duties of a judge. Enforcing the rules is not always popular, but the rules allow everyone to enjoy the game equally and safely. I agree with your philosophy to, “Apply the law as written.” If you will have me, I wish to serve under you and assist you with upholding the Constitution equally and fairly for all People.

A brief background on me: I grew up in Plano and graduated high school from JJ Pearce in Richardson. I obtained a ROTC scholarship and attended The University of Texas where I commissioned into the Texas Army National Guard. From there, I enrolled as a dual JD/MBA student at St. Mary's in San Antonio. Amidst the chaos, I married the love of my life after my first semester of law school. I still go back and forth whether 1L finals or the wedding was more nerve racking. I am the oldest of four children, and my youngest brother is currently a senior at Plano West Senior High School. In just a few months, my widowed mother will be an empty nester in Dallas. A significant part of my personal motivation to serve in your court is that I will have an opportunity to come home and spend time with my mother, before entering the next chapter of my legal career.

I hope to meet with you soon and discuss this judicial clerkship. I can be reached via email, phone, or text at the above phone number and address. I thank you for your valuable time as you review the contents of my application.

Sincerely,

*Connor G. McQuage*

Connor G. McQuage



**CONNOR G. MCQUAGE**

c.mcquage7@gmail.com

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**EDUCATION****St. Mary's University School of Law** – San Antonio, TXCandidate for Doctor of Jurisprudence – *Top 20 % & Dean's List Fall 2022*May 2023**St. Mary's University Greehey School of Business** – San Antonio, TXMaster of Business Administration – *GPA 3.93 (A)*December 2022**The University of Texas at Austin** – Austin, TXBachelor of Science, Public Relations (Digital Media Strategy) – *GPA 3.75 (A)*May 2019

- Center for Professional Education Paralegal Certificate
- McCombs Business Foundations Certificate

**LEGAL EXPERIENCE****The South Texas Business Lawyers, PLLC** – *Law Clerk*: San Antonio, TXMar 2021 – Present

- Drafted corporate documents, filed with SOS & Comptroller, maintained registered agent and minute books for clients
- Drafted pleadings for litigation relating to bankruptcy, family law, employment law, business disputes, and the DTPA
- Created subscription database of 80+ forms: researched, drafted, and published forms; continuously managed database
- Performed diligence for M&A deals totaling over \$70 million, drafted various portions of asset purchase agreements
- Successfully published two trademarks with the USPTO, published 5+ articles on firm website, drafted firm newsletter

**Davis Law Firm** – *Operations*: San Antonio, TXFeb 2020 – May 2020

- Provided direct support to major projects for CEO, COO, CFO, CMO, IT Head, and Marketing Head
- Transitioned firm digital during Stay-at-Home order and operated as Microsoft Teams administrator / virtual notary

**Legal Services for Students** – *Assistant Paralegal*: Austin, TXSep 2016 – Jul 2019

- Managed 25,000+ file database while preparing and executing legal documents for 3 attorneys and 2 law clerks
- Increased office satisfaction rating from clients from 85% to 95% while managing two student employees

**MILITARY SERVICE****Platoon Leader, Texas Army National Guard** – *Commanding*: San Marcos, TXAug 2020 – Present

- Expertly planned, coordinated, organized, implemented, oversaw, and refined all operations of the platoon
- Continuously facilitated the flow of information between enlisted leaders, high ranking staff officers, and commanders

**COVID-19 Mission** – *Joint Command Center: J3*: Austin, TXMay 2020 – Aug 2020

- Coordinated 3000+ personnel to respond to pandemic, civil defense, and hurricane relief efforts simultaneously
- Created daily orders for all joint teams; wrote reports for the Governor and the 2 Star General of Texas National Guard

**Field Artillery Officer (13A), Texas Army National Guard** – *Officer (1LT)*May 2019 – Present

- Entrusted with over \$25M in equipment; responsible for 40+ soldiers training, morale, discipline, safety, and welfare

**ROTC Cadet (09R), U.S. Army Training and Doctrine Command** – *Cadet (CDT)*Aug 2015 – May 2019

- Awarded National ROTC scholarship; served as Operations Officer and Recruiting Officer; ranked #2 / 38 in program

**Religious Affairs Specialist (56M), U.S. Army Reserve** – *Enlisted (PFC)*Oct 2013 – Aug 2015

- Enlisted at 17 with a 90/99 on ASVAB; planned and synchronized religious support operations for Civil Affairs unit

**COMMUNITY SERVICE / MAJOR AWARDS**

- Longhorn Bar Association (LBA) – *Volunteer and Member since 2020; Officer since 2022*
- Juvenile Jurisprudence Association (JJA) – *Volunteer and Member since 2020*
- Community Bible Church (CBC) – *Volunteer and Member since 2020*
- Texas Business Hall of Fame (TBHF) – *Future Texas Business Legend Scholar Award – Finalist 2022*
- ROTC – National Leadership Evaluation Training 2018 – “Advanced Camp” – *Ranked # 1 / 200*

1/21/23, 9:11 AM

Academic Transcript



S00683759 Connor G. McQuage  
Jan 21, 2023 09:10 am

## Academic Transcript

This is not an official transcript. Courses which are in progress may also be included on this transcript.

"R" column denotes repeated course at St.Mary's University:

E = course was excluded from GPA calculation (lower grade)

I = course was included in GPA calculation (higher grade)

[Institution Credit](#)   [Transcript Totals](#)   [Courses in Progress](#)

### Transcript Data

#### STUDENT INFORMATION

**Name :** Connor G. McQuage

#### Curriculum Information

##### Primary Program

**Program:** Juris Doctorate

**Major and Department:** Law, Law Department

\*\*\*Transcript type: Gateway Transcript is NOT Official \*\*\*

#### DEGREE AWARDED

**Pending:** Juris Doctorate   **Degree Date:**

#### Curriculum Information

**Program:** Juris Doctorate

**Major:** Law

#### INSTITUTION CREDIT [-Top-](#)

**Term:** Fall 2020

##### Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
LW	6335	LW	LCAP I	B-	3.000	8.01
LW	6477	LW	Federal Civil Procedure I	B+	4.000	13.32
LW	6478	LW	Torts	A-	4.000	14.68
LW	6490	LW	Contracts	A-	4.000	14.68

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1/21/23, 9:11 AM

Academic Transcript

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term:</b>	15.000	15.000	15.000	15.000	50.69	3.38
<b>Cumulative:</b>	15.000	15.000	15.000	15.000	50.69	3.38

Unofficial Transcript

**Term: Spring 2021****Academic Standing:**

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
LW	6336	LW	LCAP II	B-	3.000	8.01
LW	6341	LW	Criminal Law	B-	3.000	8.01
LW	6440	LW	Constitutional Law	C+	4.000	9.32
LW	6480	LW	Property	B	4.000	12.00

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term:</b>	14.000	14.000	14.000	14.000	37.34	2.67
<b>Cumulative:</b>	29.000	29.000	29.000	29.000	88.03	3.04

Unofficial Transcript

**Term: Summer 2021****Academic Standing:**

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
LW	6200	LW	Lawyers & Lawyering Seminar	A-	2.000	7.34
LW	7331	LW	Family Law	B+	3.000	9.99

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term:</b>	5.000	5.000	5.000	5.000	17.33	3.47
<b>Cumulative:</b>	34.000	34.000	34.000	34.000	105.36	3.10

Unofficial Transcript

**Term: Fall 2021****Academic Standing:** Good Standing

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
LW	6434	LW	Evidence	B	4.000	12.00
LW	7211	LW	Comp, Ethics & Risk Managmnt	A-	2.000	7.34
LW	8318	LW	Mortgages & Real Estate Financ	B	3.000	9.00

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term:</b>	9.000	9.000	9.000	9.000	28.34	3.15
<b>Cumulative:</b>	43.000	43.000	43.000	43.000	133.70	3.11

Unofficial Transcript

**Term: Spring 2022****Academic Standing:** Good Standing

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
LW	7375	LW	Con Criminal Procedure	B+	3.000	9.99
LW	7376	LW	Federal Income Tax	C+	3.000	6.99

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Academic Transcript

LW	8396	LW	Debtor/Creditor & Bus Bankrupt	B+	3.000	9.99	
			<b>Attempt Hours</b>	<b>Passed Hours</b>	<b>Earned Hours</b>	<b>GPA</b>	<b>Quality Points</b>
<b>Current Term:</b>			9.000	9.000	9.000	9.000	26.97
<b>Cumulative:</b>			52.000	52.000	52.000	52.000	160.67

Unofficial Transcript

**Term: Summer 2022****Academic Standing:** Good Standing

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points		
LW	6333	LW	Professional Responsibility	A-	3.000	11.01		
LW	7310	LW	Business Associations	A	3.000	12.00		
LW	7531	LW	Trauma Informed Lawyering	A-	1.000	3.67		
			Attempt Hours	Passed Hours	Earned Hours	GPA	Quality Points	GPA
Current Term:			7.000	7.000	7.000	7.000	26.68	3.81
Cumulative:			59.000	59.000	59.000	59.000	187.35	3.18

Unofficial Transcript

**Term: Fall 2022****Academic Standing:** Good Standing

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points			
LW	7251	LW	Advanced Legal Research	A	2.000	8.00			
LW	7390	LW	Contract Drafting	A-	3.000	11.01			
LW	7694	LW	Sales	B-	2.000	5.34			
LW	8610	LW	Deceptive Trade Practice	A	2.000	8.00			
				Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:				9.000	9.000	9.000	9.000	32.35	3.59
Cumulative:				68.000	68.000	68.000	68.000	219.70	3.23

Unofficial Transcript

**TRANSCRIPT TOTALS (LAW) -Top-****Level Comments:** Other Colleges Attended Graduated BS May 2019 The University of Texas - Austin, Texas

	<b>Attempt Hours</b>	<b>Passed Hours</b>	<b>Earned Hours</b>	<b>GPA</b>	<b>Quality Points</b>
<b>Total Institution:</b>	68.000	68.000	68.000	68.000	219.70
<b>Total Transfer:</b>	0.000	0.000	0.000	0.000	0.00
<b>Overall:</b>	68.000	68.000	68.000	68.000	219.70

Unofficial Transcript

**COURSES IN PROGRESS -Top-****Term: Spring 2023**

<b>Subject</b>	<b>Course</b>	<b>Level</b>	<b>Title</b>	<b>Credit Hours</b>
LW	6420	LW	Texas Civil Procedure I & II	4.000
LW	7315	LW	Mergers & Acquisitions	3.000
LW	7386	LW	Federal Courts	3.000

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Academic Transcript

LW	7395	LW	Secured Transactions	3.000
LW	8378	LW	Taxation of Business Entities	3.000

Unofficial Transcript

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RELEASE: 8.7.1

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# THE UNIVERSITY OF TEXAS AT AUSTIN

OFFICE OF THE REGISTRAR, MAIN BLDG. ROOM 1, AUSTIN, TX 78712-1157, (512) 475-7575

FICE CODE: 3658 IPEDS CODE: 228778 ATP CODE: 6882 ACT CODE: 4240

## FACSIMILE TRANSCRIPT

NAME: MCQUAGE, CONNOR GREGORY

STUDENT ID: XXX-XX-6747

DATE: 06/05/19

DOB: 08/07/96

PAGE: 1

### DEGREES AWARDED BY THE UNIVERSITY OF TEXAS AT AUSTIN:

DEGREE: BACHELOR OF SCIENCE IN PUBLIC RELATIONS

DATE: MAY 25, 2019

MAJOR: PUBLIC RELATIONS

### CERTIFICATES AWARDED BY THE UNIVERSITY OF TEXAS AT AUSTIN:

CERTIFICATE: UNDERGRADUATE

DATE: MAY 25, 2019

TITLE: BUSINESS FOUNDATIONS

HIGH SCHOOL: J J PEARCE HIGH SCHOOL  
RICHARDSON TX

CLASS OF 2015

ATTENDED: AUSTIN COMMUNITY COLLEGE

SUMMER 2017 FALL 2017

ATTENDED: MIDLAND COLLEGE

WINTER 2018 SUMMER 2018

### TRANSFERRED WORK FROM AUSTIN COMMUNITY COLLEGE

DATE ORIGINAL COURSE DESIGNATION

SUMMER, 2017 SPAN 1411 SPANISH 1

FALL, 2017 SPAN 1412 SPANISH 2

GR/CR

A 4

B 4

UT EQUIVALENT

SPN 406 4

SPN 407 4

### TRANSFERRED WORK FROM MIDLAND COLLEGE

DATE ORIGINAL COURSE DESIGNATION

WINTER, 2018 SPAN 2311 SPANISH 3

SUMMER, 2018 SPAN 2312 SPANISH 4

GR/CR

C 3

B 3

UT EQUIVALENT

SPN 312K 3

SPN 312L 3

TOTAL HOURS TRANSFERRED: 014

### COURSEWORK UNDERTAKEN AT THE UNIVERSITY OF TEXAS AT AUSTIN

#### FALL SEMESTER 2015 CREDIT BY EXAM

RHE 306	RHETORIC AND WRITING	3.0	CR
M 305G	PREPARATION FOR CALCULUS	3.0	CR
PHY 302K	GEN PHY TCH CRS: MECH/HEAT/SND	3.0	CR
PHY 302L	GEN PHY TCH CRS: ELEC/LGHT/NUC	3.0	CR
PHY 102M	LABORATORY FOR PHY 302K	1.0	CR
PHY 102N	LABORATORY FOR PHY 302L	1.0	CR

#### FALL SEMESTER 2015 LIBERAL ARTS

AMS 310	INTRO TO AMERICAN STUDIES	3.0	A-
M S 201	INTRO ARMY & CRITICAL THINKING	2.0	A
AST 301	INTRODUCTION TO ASTRONOMY	3.0	C+
M 408C	DIFFEREN AND INTEGRAL CALCULUS	4.0	B-
UGS 303	US FOREIGN POLICY	3.0	A

HRS UNDERTAKEN 15 HRS PASSED 15 GPA HRS 15 GR PTS 48.68 GPA 3.2453

#### SPRING SEMESTER 2016 CREDIT BY EXAM

GOV 310L	AMERICAN GOVERNMENT	3.0	CR
HIS 315L	THE UNITED STATES SINCE 1865	3.0	CR

MORE WORK ON NEXT PAGE

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PAGE: 2

SPRING SEMESTER 2016 LIBERAL ARTS  
 ECO 304K INTRODUCTION TO MICROECONOMICS 3.0 B-  
 GOV 312L ISSUES & POLICIES IN AMER GOV 3.0 A-  
 PHL 301 INTRODUCTION TO PHILOSOPHY 3.0 B  
 M S 203 INTRO TO PROFESSION OF ARMS 2.0 A  
 M 408L INTEGRAL CALCULUS 4.0 Q  
 HRS UNDERTAKEN 11 HRS PASSED 11 GPA HRS 11 GR PTS 36.02 GPA 3.2745

FALL SEMESTER 2016 LIBERAL ARTS  
 ADV 318J INTRO TO ADV/INTEG BRAND COMM 3.0 A-  
 C C 303 INTRO TO CLASSICAL MYTHOLOGY 3.0 B-  
 E 316M AMERICAN LITERATURE 3.0 A-  
 M S 210 LEADERSHIP & DECISION MAKING 2.0 A  
 SDS 306 STATISTICS IN MARKET ANALYSIS 3.0 B-  
 HRS UNDERTAKEN 14 HRS PASSED 14 GPA HRS 14 GR PTS 45.38 GPA 3.2414

SPRING SEMESTER 2017 COMMUNICATION  
 ADV 315 HISTORY & DEVEL OF ADVERTISING 3.0 A-  
 P R 305S INTEGRATED COMM FOR SPORTS 3.0 A  
 CMS 310K TEAM-BASED COMMUNICATION 3.0 A  
 RHE 309K RHETORIC OF THE GOSPELS 3.0 A  
 M S 212 ARMY DOCTRINE/TEAM DEVELOPMENT 2.0 A  
 HRS UNDERTAKEN 14 HRS PASSED 14 GPA HRS 14 GR PTS 55.01 GPA 3.9292  
 UNIVERSITY HONORS SPRING SEMESTER 2017

FALL SEMESTER 2017 COMMUNICATION  
 MKT 320F FOUNDATIONS OF MARKETING 3.0 B  
 ADV 345J ADV MEDIA PLANNING FOUNDATIONS 3.0 B+  
 P R 317 WRITING FOR PUBLIC RELATIONS 3.0 A-  
 P R 353 ADV & PUBLIC RELS LAW & ETHICS 3.0 A  
 M S 329 ADVANCE MILITARY SCIENCE III-A 3.0 A  
 HRS UNDERTAKEN 15 HRS PASSED 15 GPA HRS 15 GR PTS 54.00 GPA 3.6000  
 UNIVERSITY HONORS FALL SEMESTER 2017

SPRING SEMESTER 2018 COMMUNICATION  
 ACC 310F FOUNDATIONS OF ACCOUNTING 3.0 B-  
 MAN 320F FNDTNS MGMT & ORG BEHAVIOR-WB 3.0 B+  
 ADV 344K ADVERTISING RESEARCH 3.0 A  
 P R 348 PUBLIC RELATIONS TECHNIQUES 3.0 A  
 M S 329K ADVANCE MILITARY SCIENCE III-B 3.0 A  
 HRS UNDERTAKEN 15 HRS PASSED 15 GPA HRS 15 GR PTS 54.00 GPA 3.6000  
 UNIVERSITY HONORS SPRING SEMESTER 2018

FALL SEMESTER 2018 COMMUNICATION  
 FIN 320F FOUNDATIONS OF FINANCE-WB 3.0 B+  
 P R 352 STRATEGIES IN PUBLIC RELATIONS 3.0 A  
 P R 367 INTEGRATED COMMUNICATNS MGMT 3.0 A-  
 M S 339 ADVANCE MILITARY SCIENCE IV-A 3.0 A  
 HRS UNDERTAKEN 12 HRS PASSED 12 GPA HRS 12 GR PTS 45.00 GPA 3.7500  
 UNIVERSITY HONORS FALL SEMESTER 2018

MORE WORK ON NEXT PAGE

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PAGE: 3

SPRING SEMESTER 2019 COMMUNICATION

LEB	320F	FNDTNS OF BUSN LAW & ETHICS-WB	3.0	A
P R	350	PUBLIC RELATIONS INTERNSHIP	3.0	CR
P R	377K	INTEGRATED COMM CAMPAIGNS	3.0	A
CMS	313M	ORGANIZATIONAL COMMUNICATN-WB	3.0	A
M S	304	AMER MLTRY HIST: 1775-PRSNT	3.0	A
M S	339K	ADVANCED MILITARY SCIENCE IV-B	3.0	A
HRS UNDERTAKEN	18	HRS PASSED	18	GPA HRS 15 GR PTS 60.00 GPA 4.0000

UNIVERSITY HONORS SPRING SEMESTER 2019

CUMULATIVE TOTALS EARNED AS AN UNDERGRADUATE STUDENT AT U.T. AUSTIN

HRS UNDERTAKEN	134	HRS PASSED	134	GPA HRS 111 GR PTS 398.09 GPA 3.5863
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\*\*\* END OF TRANSCRIPT \*\*\*

### TSI STATUS INFORMATION

TSI AREA	TSI STATUS	EXPLANATION
ALL	EXEMPT	SAT/ACT/TAAS/TAKS

TEC 51.907 UNDERGRADUATE COURSE DROP COUNTER: X

### CORE CURRICULUM SUMMARY

CORE CURRICULUM COMPLETE

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S00683759 Connor G. McQuage  
Jan 21, 2023 09:11 am

# Academic Transcript

This is not an official transcript. Courses which are in progress may also be included on this transcript.

"R" column denotes repeated course at St.Mary's University:  
E = course was excluded from GPA calculation (lower grade)  
I = course was included in GPA calculation (higher grade)

## Institution Credit    Transcript Totals

### Transcript Data STUDENT INFORMATION

Name : Connor G. McQuage

#### Curriculum Information

Primary Program  
Program: MBA Values-driven Leadership  
Major and Department: Business Administration, Business Administration

\*\*\*Transcript type:Gateway Transcript is NOT Official \*\*\*

### DEGREE AWARDED

Awarded: Master of Business Admin    Degree Date: Dec 07, 2022

Institutional Honors: Distinguished Graduate

#### Curriculum Information

Program: MBA for Professionals  
Major: Business Administration

Sought: Master of Business Admin    Degree Date:

#### Curriculum Information

Program: MBA Values-driven Leadership

1/21/23, 9:11 AM

Academic Transcript

**Major:** Business Administration**INSTITUTION CREDIT** [-Top-](#)**Term: Fall 2021****Academic Standing:** Good Standing

Subject	Course Level	Title	Grade	Credit Hours	Quality Points
BA	6385	GR Marketing Management Core	A	3.000	12.00
BA	7332	GR Values Driven Leadership Lab I	A	3.000	12.00
BA	7355	GR Accounting for Decision Making	A-	3.000	11.01

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA Points
<b>Current Term:</b>	9.000	9.000	9.000	9.000	35.01	3.89
<b>Cumulative:</b>	9.000	9.000	9.000	9.000	35.01	3.89

Unofficial Transcript

**Term: Spring 2022****Academic Standing:** Good Standing

Subject	Course Level	Title	Grade	Credit Hours	Quality Points
BA	6375	GR International Business Core	A-	3.000	11.01
BA	7333	GR Values Driven Leadership LabII	A	3.000	12.00
BA	7365	GR Financial Management	A	3.000	12.00

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA Points
<b>Current Term:</b>	9.000	9.000	9.000	9.000	35.01	3.89
<b>Cumulative:</b>	18.000	18.000	18.000	18.000	70.02	3.89

Unofficial Transcript

**Term: Fall 2022****Academic Standing:** Good Standing

Subject	Course Level	Title	Grade	Credit Hours	Quality Points
BA	7325	GR Mgmnt of Info. and Tech.	A	3.000	12.00
BA	7334	GR Adv Business Skills Lab III	A	3.000	12.00
BA	9375	GR Leaders, Strategy, & Society	A	3.000	12.00

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA Points
<b>Current Term:</b>	9.000	9.000	9.000	9.000	36.00	4.00
<b>Cumulative:</b>	27.000	27.000	27.000	27.000	106.02	3.93

Unofficial Transcript

**TRANSCRIPT TOTALS (GRADUATE)** [-Top-](#)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA Points
<b>Total Institution:</b>	27.000	27.000	27.000	27.000	106.02	3.93
<b>Total Transfer:</b>	0.000	0.000	0.000	0.000	0.00	0.00
<b>Overall:</b>	27.000	27.000	27.000	27.000	106.02	3.93

1/21/23, 9:11 AM

Academic Transcript

Unofficial Transcript

**St. Mary's University is an equal education opportunity institution.** The University's admission standards and practices are free from discrimination on the basis of age, sex, race, creed, color, disability, ethnicity or national origin. As required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, information regarding crime statistics, campus safety, crime prevention and victim's assistance is available on the St. Mary's University Web site at <http://www.stmarytx.edu/police>. A paper copy of the report is available by request. Additionally, information regarding graduation and retention rates is available at <http://www.stmarytx.edu> All material sent to St. Mary's University becomes the property of the University and will not be released. Final admission will be granted only after a final transcript of high school and/or college work is received.

**RELEASE: 8.7.1**

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**TEXAS MILITARY DEPARTMENT**  
ARMY NATIONAL GUARD  
ALPHA BATTERY  
4<sup>TH</sup> BATTALION 133<sup>RD</sup> FIELD ARTILLERY  
1202 CLOVIS BARKER RD, SAN MARCOS, TX  
78666

NGTX-PGC-A

23 January 2023

**MEMORANDUM FOR RECORD**

**SUBJECT:** Judicial Clerkship Recommendation for Connor G. McQuage

This Memorandum For Record (MFR) is on behalf of Connor McQuage, St. Mary's School of Law Class of 2023, who has applied for a position as your law clerk.

I want to memorialize my whole-hearted recommendation of Connor to become your law clerk. Connor served as a First Lieutenant within my Field Artillery Battery from January 2021 to June 2022. To legitimize my experience to refer, a few background facts. I serve as a Captain in the Texas Army National Guard in a reservist status, and employed fulltime by Lockheed Martin Aeronautics as a Field Sales Support Systems Engineer Associate Manager on the F35 Lighting II program.

An officer in the National Guard reports one weekend a month and two weeks in the summer for annual training. However an officer's duties extend well beyond active duty time and require non-paid time to be utilized to meet all the demands. Connor was assigned to my Battery as a Platoon Leader in charge of 30 Soldiers and \$25 million dollars' worth of military equipment. His responsibilities ranged from training development and detailed planning, personnel management, evaluations, maintaining multiple types of equipment, and developing operational planning to meet all guidance by myself as the Commander. Connor successfully demonstrated excellence in all his military duties while pursuing not just a JD, but also an MBA, and working the maximum hours the American Bar Association would allow at a business law firm in San Antonio. I say all this for emphasis, Connor has achieved more than most, in each of these pursuits, with significantly less time available than his peers.

Connor is in the top 10% of officers that have ever served under my command. He consistently displays a high level of intellect and dedication to the Army, and is willing to face new challenges head on. His ability to independently research, plan, and develop training activities is highly respected among his peers. His subordinates respect his efforts to voice their concerns, professionally, to higher ranking officers. His efforts directly lead to improving my Battery's overall readiness. As a result, I recommended Connor to be promoted ahead of his peers.

NGTX-PGC-A

SUBJECT: Judicial Clerkship Recommendation for Connor G. McQuage

I am confident that Connor would surpass your expectations as your law clerk. He has consistently demonstrated his ability to quickly learn and apply new concepts accurately. Connor is disciplined, timely, respectful and possesses outstanding oral, written, and analytical skills. I enthusiastically recommend him for the position of being your Law Clerk.

Point of contact for this action is CPT Johnny Britton, 940-399-7095.  
johnny.r.britton.jr@lmco.com.



Johnny Britton  
CPT, FA  
Commanding

**STBL THE SOUTH TEXAS  
BUSINESS LAWYERS**

18911 Hardy Oak Blvd., Suite 102  
San Antonio, TX 78258

Office: 210-900-4501  
[www.southtexasbusinesslawyer.com](http://www.southtexasbusinesslawyer.com)

January 24, 2023

RE: Judicial Clerkship Recommendation for Connor G. McQuage

Your Honor:

This letter is to memorialize my full support of Connor in his pursuit to be a federal judicial clerk. Connor has worked for me as a law clerk since Spring of his 1L year, both during the semester and the interim summer and winter breaks. Connor has been an integral part in the development and growth of my law firm. His ability to prioritize tasks, operate independently, and relentlessly analyze the assignments I give him continues to impress me.

A brief background on my qualifications is relevant to give the necessary weight of my recommendation. I have a JD, MBA, and MSF from The University of Alabama. I was an associate at Cox Smith, now known as Dykema in San Antonio. Before starting my own business transactional law firm in 2019, I was corporate counsel for a very large healthcare entity in San Antonio. I have worked with many remarkably successful and brilliant lawyers in my fifteen years of practicing law. Connor is on track to give many of them a run for their money.

Over the last two years I have observed Connor as he refined his ability to research and understand challenging new areas of the law. To provide but one example, Connor recently performed a fifty-state survey over the commercial lending law as it applied to an installment loan creditor. This project included: (i) over thirty hours of research, not just online but also in a library, (ii) analyzing statutes from each state, and (iii) calling each state's respective governing financial authority to ask clarifying questions. He then prepared a report to present to the client his findings.

Connor is currently operating at a second-year associate level, and I have entrusted to him the responsibilities to match his abilities. I have full faith and confidence in him, so much so that he is practicing under my license with a supervised practice bar card. In fact, I have even offered him employment after graduation with me. However, he aspires to serve the federal judiciary. I graciously urge you to strongly consider him as your clerk. I know that he will surpass your expectations.

Sincerely,



Matthew Duke

**CONNOR G. MCQUAGE**

c.mcquage7@gmail.com

(214) 405-7249

**WRITING SAMPLE**

The following writing sample is a combination of excerpts from a paper I wrote, “An Aspirational Oath,” for my writing credit in the course *Lawyers and Lawyering*. I have chosen this writing sample because it is a demonstration of how I critically think and reason. This writing and research are entirely my own. It has received general feedback from peers and professors, but the revisions are entirely my own.

## Section I. Introduction

This excerpt has been modified from its original four additional sections. Section II will discuss the modern definition of oaths and their origin in the Declaration of Independence. Section III will discuss statutory oaths and a discussion of conflicting oaths. Section IV will evaluate truth, oaths in practice, and the consequences of breaking an oath. Finally, Section V will offer a brief conclusion.

[\*\*\*]

## Section II. What is an Oath? Now and Then

### A. Modern Definition and Analysis of Definitions

#### i. Denotation of Oath

Black's Law Dictionary has twenty-seven types of oaths included in the definition of "oath." The definition of "oath" specifically is:

A solemn declaration, accompanied by a swearing to God or a revered person or thing, that one's statement is true or that one will be bound to a promise. The person making the oath implicitly invites punishment if the statement is untrue or the promise is broken. The legal effect of an oath is to subject the person to penalties for perjury if the testimony is false.<sup>1</sup>

Based on this definition an oath has three elements: (1) a solemn declaration, (2) a swearing to a higher being, and (3a) the statement is true, or (3b) that one will be bound by a promise. However, what is a "solemn" declaration? Black's Law Dictionary does not define "solemn." Following is a series of definitions from Webster beginning with the definition for solemn: An invocation of a

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<sup>1</sup> OATH, BLACK'S LAW DICTIONARY (11th ed. 2019).



religious sanction.<sup>2</sup> In which sanction is a formal decree.<sup>3</sup> In which decree is an order usually having the force of law.<sup>4</sup>

Fitting this series of definitions into element one above it now reads: (1) an invocation of a religious order usually having the force of law. The usage of, “the force of law,” validates the second half of Black’s definition for oath in which the legal effect of breaking an oath is a possible perjury charge. I will use these elements to analyze all oaths in this article. Whenever the word oath is used in this article beyond this point, the above definition will apply.

[\*\*\*]

## ii. History of Oaths

Within the last 300 years, the 1776 American Declaration of Independence is actually an oath fitting the elements identified in Section II(A)(i). The ultimate paragraph:

We, therefore, the representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions [element 1], . . . with a firm reliance on the protection of Divine Providence [element 2], we mutually pledge [element 3b] to each other our lives, our fortunes, and our sacred honor.<sup>5</sup>

However, the United States Constitution, written only two years after the Declaration of Independence, mentions oaths only three times, and this is when the nature of oaths changes in history. From 700 B.C. to 1787 A.D., nearly a 2,500-year span, oaths fit the modern definition identified in Section II(A)(i).<sup>6</sup>

<sup>2</sup> “Solemn.” Merriam-Webster, *Merriam-Webster.com Dictionary*, (Jun. 15, 2021, 6:05 PM), <https://www.merriam-webster.com/dictionary>.

<sup>3</sup> “Sanction.” *Id.*

<sup>4</sup> “Decree.” *Id.*

<sup>5</sup> Declaration of Independence (US 1776).

<sup>6</sup> Note to reader: this historical analysis has been removed from this excerpt.

None of the three times the United States Constitution mentions oaths adheres to the modern definition. Article 1, Section 3, requires the Senate to be on oath *or affirmation* during impeachment. Second, the oath of presidential office lacks elements 1 or 2: “I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect, and defend [element 3] the Constitution of the United States.”<sup>7</sup>

Arguably using the word “faithfully” the Founders were implying religion and that the President was swearing to God. However, Article VI of the United States Constitution counters this argument:

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both United States and of the several States, shall be bound by Oath *or Affirmation*, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.<sup>8</sup>

The inclusion of *no religious test* and the exclusion of *so help me God* is strong evidence that the Founders intended to depart from history. What does that mean for oaths today? Almost 245 years later, *so help me God* is included in both the Federal Oath of Office and in the Texas State Bar oath.<sup>9</sup> Section III explores this question.

[\*\*\*]

### Section III. When Oaths Collide

#### A. Statutory Required Oaths

I have personally sworn one statutory oath, the Oath of Office for the Uniform Services.<sup>10</sup> Within the year, the State of Texas will require me to swear another to become an attorney.<sup>11</sup> Rule

<sup>7</sup> U.S. Const. art. II, § I, cl. 8.

<sup>8</sup> U.S. Const. art. VI, cl. 3.

<sup>9</sup> 5 U.S.C.A. § 3331 (West).

<sup>10</sup> 5 U.S.C.A. § 3331 (West).

<sup>11</sup> Texas S.B. No. 534 (2015).

46(a)(2) of the Federal Rules of Appellate Procedure and Rule 46(b)(4) of the Federal Circuit Rules require an attorney to subscribe to another oath to practice in their courtrooms. Why are we statutorily required to swear these oaths? Honorable Judge Hibben, a Circuit Court Judge on the Eighth Circuit, answers with, “Long before we encounter any law, we first have an obligation to govern ourselves. For lawyers, that obligation is summarized in our oath.”<sup>12</sup>

Do these statutory oaths adhere to the modern elements identified in Section I? We will look at each briefly. First, the Oath of Office for the Uniform Services:

I do solemnly (element 1) swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic (element 3b); that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion (element 3a); and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God (element 2).

I argue that if one is to affirm instead of solemnly swear, then this oath is missing the first element. I argue that this oath does not satisfy the modern definition if one chooses to affirm. Affirming to defend the United States Constitution satisfies part of element one as the Constitution is a formal decree that has the force of law, however, is it an invocation of a religious sanction? When ratified, the United States Constitution did not contain the word “God” as did the American Declaration of Independence.<sup>13</sup> The First Amendment of the United States Constitution declares that no laws shall be made respecting an establishment of religion.<sup>14</sup> As discussed in Section II, it appears intentional the Founders diverged from the traditional meaning of oath.

Second, the State Bar of Texas Oath:

I do solemnly (element 1) swear that I will support the Constitutions of the United States, and of this State (element 3b); that I will honestly demean myself in the

<sup>12</sup> Hon. Nathaniel S. Hibben, *The Attorney Oath A Summation of the First Principles of Our Profession*, Wyo. Law. (2021).

<sup>13</sup> Declaration of Independence (US 1776).

<sup>14</sup> U.S. Const. amend. 1.

practice of law; that I will discharge my duties to my clients to the best of my ability; and, that I will conduct myself with integrity and civility in dealing and communicating with the court and all parties. So help me God (element 2).

This statutory oath does not give the option to affirm as does the federal oath. Texas, known for its strong religious roots, intentionally did not provide this option in the oath.

Third, Rule 46(a)(2) of the Federal Rules of Appellate Procedure includes an oath: I do solemnly (element 1) swear (or affirm) that I will conduct myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States (element 3b). This oath does not include “So help me God.” Although not necessary to satisfy element two, there is no other verbiage in this oath that is a swearing to a higher being. I could see an argument that “uprightly” could tenuously be a swearing to a higher being if the oath taker was religious and subjectively interpreted the word this way, but this argument does not convince me as the previous oaths we have analyzed that have explicitly included “God.”

[\*\*\*]

## **Section IV. So what?**

### **A. Oaths and the Truth**

So, what do Lawyers owe one another with respect to these oaths? Judge Joseph A. Greenaway Jr., a District Court Judge of the District of New Jersey, formulated his own oath that he gave during the commencement address to the 2006 Class of the Cardozo School of Law:

I do solemnly swear that I shall be civil to my colleagues at the bar, conduct myself honorably with clients, the court, and all whom I come in contact with, as a member of the bar, and that I shall uphold the great traditions of the bar to act as a teacher and

mentor to those who come after me and to never forget that the essence of the practice of law is the pursuit of truth, justice, and fairness.<sup>15</sup>

This does not meet the elements of an oath. It is missing element two. This is ironic as the Judge begins his article with a verse from Luke alluding to his religious beliefs, and then invites readers to analyze his oath. However, that was not Judge Greenway's goal. He stated his goal was to get individuals, "To participate in a communal experience reflecting on [their] commitment to the profession, [their] craft, and one another." I find this incredibly hypocritical as the Judge states he cannot remember his own statutory oath, so he writes a new one. If he were reflecting on his commitment to the profession, I would think his first step would be remembering his own oath.

[\*\*\*]

Recall Judge Hibben's argument from Section III A that the oath persists because it is aspirational. Recall that just above, Judge Greenway could not recall his own oath yet emphasizes the great traditions of the bar. Consider the Texas case of *Thomas v. Burkhalter* in which the failure of the trial Judge to have their constitutional oath on file, and thus no proof of an oath ever being taken, did not invalidate the Judge's ability to be a judge.<sup>16</sup> The preceding examples are all instances of Judges dismissing the statutory oath as aspirational, not finding the oath important enough to remember, not having evidence of their oath and even the *higher court finding this not to be an issue*. These judges appear to be acting through a cultural lens rather than a statutory one.

[\*\*\*]

So, what do lawyers owe one another? I argue they owe each other the bare minimum, to remember their statutory oaths and accept the statutory penalties.

[\*\*\*]

<sup>15</sup> Joseph A. Greenaway, Jr., *An Oath for the Profession: What Do We Owe Each Other?*, *Litigation* 3 (2008).

<sup>16</sup> 90 S.W.3d 425, 426 (Tex. App. 2002).

## B. Oath Breakers

Consider the following from a case in which an attorney violated his oath in one state and attempted to continue practicing in another:

The oath of office as an attorney and counselor at law is not only binding here in Colorado but everywhere. He cannot put it aside or renounce it at pleasure. It abides with him at all times and places, and he will be held responsible to this court for his misconduct as an attorney so long as his name continues on the roll.<sup>17</sup>

This particular attorney was being disbarred for professional misconduct, in violation of his oath. This would have never reached a courtroom without the client filing a misconduct complaint. There is no way to know how long this attorney was in violation of their oath before being disbarred. There is no way to know the truth. There is a story that in a courtroom in Kentucky when a witness was asked to swear to tell the truth, the whole truth, and nothing but the truth, he replied, “Which one do you want?”<sup>18</sup>

The truth that lawyers deal with, as Stein notes in the same article as the above quote from the witness, is always combined with something else. There is always a taint of bias and prejudice to the truth. This does not just apply to witnesses under oath in a courtroom. This applies to all human beings unless one is able to separate themselves from their own biases and prejudices. These biases and prejudices are what allow people to create this paradox: “It’s not a lie, it is just not the truth.” What is difficult for me to wrestle with is that the statutory oaths do not have a promise to be truthful. There is a statement to honestly demean oneself in the Texas oath, however that is far from, “I swear to tell the truth, the whole truth, and nothing but the truth,” as a witness must swear.

Published 1964, Lieutenant Colonel (LTC) Thomas Reese, U.S. Army Judge Advocate General, writes for the *Military Law Review* the article “An Officer’s Oath.”<sup>19</sup> What is relevant to this article is the history LTC Reese provides. The current federal statutory oath of office was

<sup>17</sup> *State Bd. of L. Examiners of Wyoming v. Brown*, 77 P.2d 626, 631-32 (1938).

<sup>18</sup> Jacob Stein, *Liars Don't Always Lose*, *Litigation* 24 (1996).

<sup>19</sup> It goes into much greater detail of the statutory oath of office for government officials and military officers than this article does.

codified on July 11<sup>th</sup>, 1868, after multiple revisions, because Confederate soldiers and politicians wanted to regain their positions in the reformed Union.<sup>20</sup> Before the oath's current form, Congress in 1862, specifically Chapter 128 of the Laws of 1862, attempted to bar any individual who had been loyal to the Confederacy to now hold office by making it impossible for them to take the oath of office without contradicting themselves, thus being liable for perjury as soon as the oath was spoken.<sup>21</sup>

I am not the only military officer to have a divided loyalty between the Federal government and the State. General Robert E. Lee commissioned from West Point Military Academy into the Union Army. When asked the question whether his first loyalty was to his State or to his Country, he responded by resigning his commission and becoming the General of the Confederate forces. After his surrender, General Lee, through General Grant—the *Commander of the Union Forces*—sent his application for pardon to President Johnson. It was denied.<sup>22</sup> Mr. Justice Miller wrote in *United States v. Lee*:<sup>23</sup>

No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it.

General Lee swore allegiance to the Union, defected, then swore allegiance to the Confederacy. Then after losing, wanted to swear allegiance back to the Union and was denied because of the punishments for the oaths he had taken. Could this be because he was being made an example of given his high rank in the Confederate military? Would the same decision have been made by the Supreme Court today regarding contradicting oaths?

[\*\*\*]

<sup>20</sup> 15 Stat. 85 (1868).

<sup>21</sup> Lieutenant Colonel Thomas Reese, *An Officers Oath*, *Military Law Review*, 6 (1964).

<sup>22</sup> *Id.* At 27-28.

<sup>23</sup> 106 U.S. 196, 220 (1882).

## Section V. Conclusion

[\*\*\*]

People take oaths to create the strongest form of trust possible. We swear to an all-mighty power that our own words will be the truth. This is a paradox. I am using my words to justify my own words. Sure, I am invoking a higher power with my words, but at the end of everything that is all they are, just words. Words do not create trust, consistent actions through time do. Habitual demonstration of the words spoken show another person that one's word can be relied upon. I think that is all an oath is, a promise to do everything in my power to maintain a specific habit, and if I fail, I answer to God.

[\*\*\*]



**Applicant Details**

First Name **Kristin**  
 Last Name **Mijares**  
 Citizenship Status **U. S. Citizen**  
 Email Address [kmijares@winston.com](mailto:kmijares@winston.com)  
 Address

**Address**

**Street**  
**4707 Mill Creek Rd**  
**City**  
**Dallas**  
**State/Territory**  
**Texas**  
**Zip**  
**75244**  
**Country**  
**United States**

Contact Phone Number **214-458-2999**

**Applicant Education**

BA/BS From **Southern Methodist University**  
 Date of BA/BS **May 2008**  
 JD/LLB From **Southern Methodist University Dedman School of Law**  
<https://www.smu.edu/Law/Career-Services>  
 Date of JD/LLB **May 16, 2016**  
 Class Rank **20%**  
 Law Review/Journal **Yes**  
 Journal(s) **Science and Technology**  
 Moot Court Experience **No**

**Bar Admission**

Admission(s) **Texas**

**Prior Judicial Experience**

Judicial Internships/ Externships	<b>Yes</b>
Post-graduate Judicial Law Clerk	<b>No</b>

**Specialized Work Experience**

Specialized Work Experience	<b>Patent</b>
--------------------------------	---------------

**Recommenders**

Schell, Russell  
RSchell@schellcooley.com  
214-665-2020

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

Kristin G. Mijares  
2121 N. Pearl St., Ste. 900  
Dallas, TX 75201

April 11, 2023

Hon. Irma C. Ramirez  
Earle Cabell Federal Building  
1100 Commerce St.  
Dallas, TX 75242

Dear Judge Ramirez:

I am writing to apply for a 2024-2026 clerkship with your chambers. I am a fourth-year attorney practicing complex commercial litigation with a focus on employment law. I believe my familiarity with the subject matter of your cases and my understanding of the thought process of a litigator would make a strong addition to your chambers.

I have spent my career thus far honing my research and writing skills by briefing and arguing cases. As an associate at Schell Cooley LLP, I gained federal and state litigation experience by operating in a fast-paced personal injury environment and maintaining a running docket of 20-50 cases. I sat first chair in two small-scale trials and second chair in a handful of larger, more complex trials. At Winston & Strawn LLP, I am involved in numerous federal matters, ranging from intellectual property and patent law to employment law.

My undergraduate background (B.S. in Biology/Chemistry and post-baccalaureate coursework in Neuroscience) led me to seek out patent, health law, and tort courses in law school. I served on the Hon. Barbara M. G. Lynn American Inn of Court which strengthened my interest in patents; it also elicited my interest in litigation and honed my public speaking and advocacy skills. As a research assistant for Professor Thomas Mayo, I realized my passion for legal research and writing through my study of the potential impacts that proposed Department of Health and Human Services regulations would have on existing laws.

I believe my background and skills would be an asset to your work on the bench: my familiarity with the concepts and terms unique to employment and patent law, as well as my understanding of the litigation process, would help your docket run more efficiently. I submit my resume, unofficial transcript, and writing sample with this application. Arriving separately are three letters of recommendation. I would welcome the opportunity to interview with you. Thank you for your consideration.

Respectfully,

Kristin G. Mijares

## KRISTIN G. MIJARES

Dallas, TX 75244 • 214-458-2999 • [kristingmijares@aol.com](mailto:kristingmijares@aol.com) • [LinkedIn Profile](#)

### ATTORNEY

Persuasive litigator backed by expertise spanning complex commercial litigation, intellectual property, healthcare regulatory, personal injury, and medical malpractice. Exceptional record of achievement overseeing litigation, contract negotiations, employment law, and regulatory compliance functions. Passionately represent client interests. Work diligently to analyze details, minimize risk, and propel positive resolutions. Proven success achieving case dismissals, no-fault judgements, advantageous settlements, and favorable verdicts.

### EXPERTISE

- *Litigation Strategy & Management*
- *Personal Injury & Mass Tort Litigation*
- *Intellectual Property*
- *Client Advocacy & Trial Preparation*
- *Antitrust Law*
- *Complex Commercial Litigation*

### PROFESSIONAL EXPERIENCE

#### WINSTON & STRAWN LLP – Dallas, TX

##### Litigation Practice Counsel, 2022 to Present

Advocate for clients throughout the litigation process.

Efficiently balance a docket of complex cases with minimal input and supervision from partners.

#### Contributions:

- Handled numerous multimillion-dollar cases involving corporate governance, complex commercial matters, intellectual property and patents, antitrust, patents, non-competes, securities, defamation, breach of contract, employment issues, business torts, and international trade disputes.
- Argued case facts, legal precedents, and nuances of the law to secure early dismissals and other positive client outcomes.
- Advocated for client asylum, withholding of removal (withholding), and relief under the Convention Against Torture (CAT) before the immigration court.
- Edited various State Codes to remove genderized terms and effectuate equal administration of justice.

#### Past Experience:

**Senior Litigation Associate, 2019-2022 – Schell Cooley Campbell LLP – Addison, TX**

**In-House Counsel, 2017-2019 – Pure Medicine – Dallas, TX**

**Associate, 2016-2017 – Glast, Phillips & Murray, P.C. – Dallas, TX**

**Intern, May-July 2015 – Texas Scottish Rite Hospital for Children – Dallas, TX**

**Intern, August-December 2015 – Baylor Scott & White Health – Dallas, TX**

### EDUCATION & CREDENTIALS

**Juris Doctor, Cum Laude – SMU DEDMAN SCHOOL OF LAW**

**Bachelor of Science in Biology and Chemistry – SOUTHERN METHODIST UNIVERSITY**

**Bar Admissions:** State of Texas (2017), National Native American Bar Association (2017)

Unofficial Student Grade Transcript

Southern Methodist University

Name : Mijares,Kristin Gillis

Student ID: 18791712

SSN : XXX-XX-1282

Print Date : 2016-08-19

- - - - - Degrees Awarded - - - - -

Degree : Bachelor of Science

Confer Date : 2008-05-17

Plan : Major: Biological Sciences

Plan : Minor: Chemistry

-----  
Degree : Juris Doctor

Confer Date : 2016-05-14

Degree Honors : Cum Laude

Plan : Major: Law

- - - - - Beginning of Law Record - - - - -

Fall 2012 (2012-08-17 to 2012-12-13)

Program : Law - Juris Doctor

Plan : Law - JD Major

LAW	6371	CIVIL PROCEDURE I	3.00	3.00 A	12.000
LAW	7391	TORTS I	3.00	3.00 B	9.000
LAW	8290	CONTRACTS I	2.00	2.00 A	8.000
LAW	8375	LRWA I	3.00	3.00 C+	6.900
TERM GPA : 3.263			TERM TOTALS :	11.00 11.00	35.900
CUM GPA : 3.263			CUM TOTALS :	11.00 11.00	35.900

**Spring 2013 (2013-01-10 to 2013-05-10)**

Program : Law - Juris Doctor

Plan : Law - JD Major

LAW	8271	CIVIL PROCEDURE II	2.00	2.00 B+	6.600
LAW	8292	TORTS II	2.00	2.00 B	6.000
LAW	8376	LRWA II	3.00	3.00 B	9.000
LAW	8390	CONTRACTS II	3.00	3.00 B-	8.100
TERM GPA :		2.970	TERM TOTALS :	10.00	10.00 29.700
CUM GPA :		3.123	CUM TOTALS :	21.00	21.00 65.600

**Summer 2013 (2013-05-20 to 2013-07-15)**

Program : Law - Juris Doctor

Plan : Law - JD Major

LAW	6420	BUSINESS ENTERPRISE	4.00	4.00 B-	10.800
LAW	7350	PROFESSIONAL RESPONSIBILITY	3.00	3.00 A-	11.100
TERM GPA :		3.128	TERM TOTALS :	7.00	7.00 21.900
CUM GPA :		3.125	CUM TOTALS :	28.00	28.00 87.500

**Fall 2013 (2013-08-19 to 2013-12-12)**

Program : Law - Juris Doctor

Plan : Law - JD Major

LAW	6280	PATENT LAW	2.00	2.00 B	6.000
LAW	8050	PUBLIC SERVICE REQUIREMENT		0.00 P	
TERM GPA :		3.000	TERM TOTALS :	2.00	2.00 6.000
CUM GPA :		3.116	CUM TOTALS :	30.00	30.00 93.500

**Spring 2014 (2014-01-09 to 2014-05-09)**

Program : Law - Juris Doctor

Plan : Law - JD Major

LAW	6284	PATENT PROSECUTION	2.00	2.00 B-	5.400
TERM GPA :		2.700	TERM TOTALS :	2.00 2.00	5.400
CUM GPA :		3.090	CUM TOTALS :	32.00 32.00	98.900

**Summer 2014 (2014-05-19 to 2014-07-14)**

Program : Law - Juris Doctor

Plan : Law - JD Major

LAW	7326	REAL ESTATE TRANSACTIONS	3.00	3.00 A	12.000
TERM GPA :		4.000	TERM TOTALS :	3.00 3.00	12.000
CUM GPA :		3.168	CUM TOTALS :	35.00 35.00	110.900

**Fall 2014 (2014-08-25 to 2014-12-19)**

Program : Law - Juris Doctor

Plan : Law - JD Major

LAW	6222	CONSTITUTIONAL LAW I	2.00	2.00 B-	5.400
LAW	8282	PROPERTY I	2.00	2.00 A-	7.400
LAW	8341	CRIMINAL LAW	3.00	3.00 A-	11.100
TERM GPA :		3.414	TERM TOTALS :	7.00 7.00	23.900
CUM GPA :		3.209	CUM TOTALS :	42.00 42.00	134.800

**Spring 2015 (2015-01-08 to 2015-05-08)**

Program : Law - Juris Doctor

Plan : Law - JD Major

LAW	6381	PROPERTY II	3.00	3.00 A-	11.100
LAW	6395	TEXAS MATRIMONIAL PROP	3.00	3.00 A-	11.100
LAW	8311	CONSTITUTIONAL LAW II	3.00	3.00 B	9.000

TERM GPA : 3.466 TERM TOTALS : 9.00 9.00 31.200

CUM GPA : 3.254 CUM TOTALS : 51.00 51.00 166.000

**Summer 2015 (2015-05-26 to 2015-07-21)**

Program : Law - Juris Doctor

Plan : Law - JD Major

LAW 7308 CIVIL RTS LITIGATION 3.00 3.00 A 12.000

LAW 8455 EVIDENCE 4.00 4.00 A 16.000

TERM GPA : 4.000 TERM TOTALS : 7.00 7.00 28.000

CUM GPA : 3.344 CUM TOTALS : 58.00 58.00 194.000

**Fall 2015 (2015-08-24 to 2015-12-17)**

Program : Law - Juris Doctor

Plan : Law - JD Major

LAW 6216 CORPORATE COUNSEL EXTERN PROG. 2.00 2.00 B 6.000

LAW 6347 FAMILY LAW 3.00 3.00 B 9.000

LAW 7320 LAW & MED - HEALTH CARE 3.00 3.00 A- 11.100

LAW 7385 TEXAS PRE-TRIAL PROCEDURE 3.00 3.00 A- 11.100

LAW 8201 LEGAL EXTERNSHIP 2.00 2.00 P

TERM GPA : 3.381 TERM TOTALS : 13.00 13.00 37.200

CUM GPA : 3.350 CUM TOTALS : 71.00 71.00 231.200

**Spring 2016 (2016-01-07 to 2016-05-05)**

Program : Law - Juris Doctor

Plan : Law - JD Major

LAW 6160 ADV LEGAL WRITING/EDITING 1.00 1.00 B 3.000

LAW 6205 LAW, LITERATURE, AND MEDICINE 2.00 2.00 A- 7.400

LAW 6213 ADV CONTRACTS WORKSHOP 2.00 2.00 B+ 6.600



LAW	6308	ADV. FAMILY LAW SEMINAR	3.00	3.00 B+	9.900
LAW	7383	SEL. PROB IN ANTITRUST	3.00	3.00 A	12.000
LAW	8222	ADVANCED CONTRACTS: DRAFTING	2.00	2.00 B+	6.600
LAW	8306	LAW AND SCIENCE	3.00	3.00 B+	9.900
TERM GPA :		3.462	TERM TOTALS :	16.00	16.00 55.400
CUM GPA :		3.371	CUM TOTALS :	87.00	87.00 286.600
<b>Law Career Totals</b>					
CUM GPA :		3.371	CUM TOTALS :	87.00	87.00 286.600

[Return](#)

## Unofficial Transcript

Name: Mijares, Kristin Gillis  
 Student ID: 18791712  
 SSN: XXX-XX-1282  
 DOB: 05/28/XXXX

Print Date: 2023/04/04

## ----- Academic Program History -----

Program: Dedman College I  
 2004/05/12: Active in Program  
 Program: Dedman College II  
 2006/04/19: Active in Program  
 Program: Dedman College II  
 2008/05/23: Completed Program

## ----- Degrees Awarded -----

Degree: Bachelor of Science  
 Confer Date: 2008/05/17  
 Plan: Major: Biological Sciences  
 Plan: Minor: Chemistry  
 Degree: Juris Doctor  
 Confer Date: 2016/05/14  
 Degree Honors: Cum Laude  
 Plan: Major: Law

## ----- Beginning of Undergraduate Record -----

Fall 2004 (2004/08/19 - 2004/12/11)

Course	Description	Attempted	Earned	Grade	Points
BIOL 1401	INTRODUCTORY BIOLOGY	4.00	4.00	B-	10.800
CHEM 1113	GENERAL CHEMISTRY LAB	1.00	1.00	A	4.000
CHEM 1303	GENERAL CHEMISTRY	3.00	3.00	B-	8.100
EDU 1110	ORACLE	1.00	1.00	P	0.000
ENGL 1301	RHETORIC I	3.00	3.00	B-	8.100
MATH 1304	PRECALCULUS MATH	3.00	3.00	C+	6.900
Term GPA : 2.707 Term Totals :		15.00	15.00		37.900
Cum GPA 2.707 Cum Totals		15.00	15.000		37.900

Spring 2005 (2005/01/12 - 2005/05/07)

Course	Description	Attempted	Earned	Grade	Points
BIOL 1402	INTRODUCTORY BIOLOGY	4.00	4.00	B	12.000
CHEM 1114	GENERAL CHEMISTRY LAB	1.00	1.00	A-	3.700
CHEM 1304	GENERAL CHEMISTRY	3.00	3.00	B	9.000
ENGL 1302	RHETORIC II	3.00	3.00	C+	6.900
MATH 1337	CALC W/ ANALYTIC GEOMETRY I	3.00	3.00	C	6.000
WELL 1101	CHOICES I: CONCEPTS WELL	1.00	1.00	P	0.000
Term GPA : 2.685 Term Totals :		15.00	15.00		37.600
Cum GPA 2.696 Cum Totals		30.00	30.000		75.500

Fall 2005 (2005/08/18 - 2005/12/10)

Course	Description	Attempted	Earned	Grade	Points
ANTH 2301	INTRO CULTURAL ANTHRO	3.00	3.00	B	9.000
BIOL 3304	GENETICS	3.00	3.00	C	6.000
CHEM 3117	ORGANIC CHEMISTRY LAB	1.00	1.00	B	3.000
CHEM 3371	ORGANIC CHEMISTRY	3.00	3.00	B-	8.100
HIST 3347	CIVIL WAR+RECONSTRUCTION	3.00	3.00	B+	9.900
PSYC 3380	HEALTH PSYCHOLOGY	3.00	3.00	A	12.000
Term GPA : 3.000 Term Totals :		16.00	16.00		48.000

Cum GPA 2.806 Cum Totals 46.00 46.000 123.500

Spring 2006 (2006/01/17 - 2006/05/11)

Course	Description	Attempted	Earned	Grade	Points
BIOL 3350	CELL BIOLOGY	3.00	3.00	A-	11.100
CHEM 3118	ORGANIC CHEMISTRY LAB	1.00	1.00	B	3.000
CHEM 3372	ORGANIC CHEMISTRY	3.00	3.00	C-	5.100
ECO 1312	PRIN: INFLATION, RECESSION	3.00	3.00	A	12.000
ME 1305	INFORMATION TECH& SOCIETY	3.00	3.00	B+	9.900
SOCI 2310	INTRO TO SOCIOLOGY	3.00	3.00	A-	11.100
Term GPA : 3.262 Term Totals :		16.00	16.00		52.200

Cum GPA 2.928 Cum Totals 62.00 62.000 175.700

Fall 2006 (2006/08/17 - 2006/12/09)

Course	Description	Attempted	Earned	Grade	Points
BIOL 3403	MICROBIOLOGY	0.00	0.00	W	0.000
ECO 1311	PRIN: CONSUMERS, FIRMS, MKTS	3.00	3.00	B	9.000
PHYS 1105	GENERAL PHYSICS LAB	1.00	1.00	A	4.000
PHYS 1307	GENERAL PHYSICS	3.00	3.00	B	9.000
STAT 2331	INTRO STATISTICAL METHODS	3.00	3.00	A	12.000
Term GPA : 3.400 Term Totals :		10.00	10.00		34.000

Cum GPA 2.995 Cum Totals 72.00 72.000 209.700

Spring 2007 (2007/01/16 - 2007/05/10)

Course	Description	Attempted	Earned	Grade	Points
BIOL 3303	EVOLUTION	3.00	3.00	B+	9.900
BIOL 3342	PLANT KINGDOM	3.00	3.00	A	12.000
PHYS 1106	GENERAL PHYSICS LAB	1.00	1.00	B+	3.300
PHYS 1308	GENERAL PHYSICS	3.00	3.00	A-	11.100
SOCI 3351	MARRIAGE AND FAM	3.00	3.00	A	12.000
Term GPA : 3.715 Term Totals :		13.00	13.00		48.300

Cum GPA 3.108 Cum Totals 85.00 85.000 258.000

Summer 2007 (2007/05/31 - 2007/08/01)

Course	Description	Attempted	Earned	Grade	Points
BIOL 3343	FIELD BOTANY	3.00	3.00	A	12.000
BIOL 3347	SYSTEMATIC BOTANY	3.00	3.00	A	12.000

Unofficial Transcript

Name: Mijares, Kristin Gillis  
 Student ID: 18791712  
 SSN: XXX-XX-1282  
 DOB: 05/28/XXXX

Term GPA : 4.000 Term Totals : 6.00 6.00 24.000  
 Cum GPA 3.168 Cum Totals 91.00 91.000 282.000

Fall 2007 (2007/08/23 - 2007/12/15)

Course	Description	Attempted	Earned	Grade	Points
ANTH 2302	PEOPLE OF THE EARTH	3.00	3.00	A	12.000
BIOL 3365	CANCER BIOLOGY	3.00	3.00	A	12.000
CF 3334	FANTASTIC ARCHAEOLOGY	3.00	3.00	A	12.000
ENGL 1330	THE WORLD OF SHAKESPEARE	3.00	3.00	A	12.000
PHIL 1318	CONTEMP MORAL PROBLEMS	3.00	3.00	A	12.000
WELL 2113	CHOICES II: INDIVIDUAL FITNESS	1.00	1.00	P	0.000
Term GPA :	4.000	Term Totals :	16.00	16.00	60.000
Cum GPA	3.288	Cum Totals	107.00	107.000	342.000

Spring 2008 (2008/01/15 - 2008/05/09)

Course	Description	Attempted	Earned	Grade	Points
BIOL 3222	MOLECULAR GENETICS LAB	2.00	2.00	A	8.000
BIOL 4132	SENIOR SEMINAR	1.00	1.00	A	4.000
BIOL 4331	DEVELOPMENTAL BIOLOGY	3.00	3.00	A	12.000
CFA 3302	WOMEN:IMAGES&PERSPECTIVES	3.00	3.00	A	12.000
CHEM 5398	MEDICINAL CHEMISTRY	3.00	3.00	A	12.000
MUHI 1321	MUSIC: ART OF LISTENING	3.00	3.00	A	12.000
Term GPA :	4.000	Term Totals :	15.00	15.00	60.000
Cum GPA	3.378	Cum Totals	122.00	122.000	402.000

Undergraduate Career Totals  
 Cum GPA: 3.378 Cum Totals 122.00 122.00 402.000

----- End of Unofficial Transcript -----

Unofficial Transcript - UT-Dallas

Name: Kristin Michelle Gillis

Student ID: 2010657808

External Degrees

Southern Methodist University  
Bachelor of Science 2008-05-17

Transfer Credits

Transfer Credit from BioMedical Certificate Prerequisites

Applied Toward Undergrad Non-Degree Seeking Program

2006 Fall

Course	Description	Attempted	Earned	Grade	Points
BIOL 1106	CCN:BIOLOGY FOR SCI MJR I LAB	1.000	1.000	B-	0.000
BIOL 1107	CCN:BIOLOGY FOR SCI MJR II LAB	1.000	1.000	B	0.000
BIOL 2311	INTRO TO MODERN BIOLOGY I	3.000	3.000	B-	0.000
BIOL 2312	INTRO TO MODERN BIOLOGY II	3.000	3.000	B	0.000
BIOL 3301	CLASSICAL & MOLECULAR GENETICS	3.000	3.000	C	0.000
BIOL 3302	EUKARYOTIC MOLEC & CELL BIOL	3.000	3.000	A-	0.000
BIOL 3305	EVOLUTION	3.000	3.000	B+	0.000
BIOL 4308	DEVELOPMENTAL BIOLOGY	3.000	3.000	A	0.000
CHEM 1111	GENERAL CHEMISTRY LAB I	1.000	1.000	A	0.000
CHEM 1112	GENERAL CHEMISTRY LAB II	1.000	1.000	A-	0.000
CHEM 1311	GENERAL CHEMISTRY I	3.000	3.000	B-	0.000
CHEM 1312	GENERAL CHEMISTRY II	3.000	3.000	B	0.000
MATH 2312	PRECALCULUS	3.000	3.000	C+	0.000
MATH 2413	CCN:CALCULUS I	3.000	3.000	C	0.000
PHYS 2125	PHYSICS LABORATORY I	1.000	1.000	A	0.000
PHYS 2126	PHYSICS LABORATORY II	1.000	1.000	B+	0.000
PHYS 2325	MECHANICS	3.000	3.000	B	0.000
PHYS 2326	ELECTROMAGNETISM AND WAVES	3.000	3.000	A-	0.000
STAT 1342	STATISTICAL DECISION MAKING	3.000	3.000	A	0.000
Course Trans GPA:	0.000	Transfer Totals:	45.000	45.000	0.000

Academic Program History

Program: Undergrad Non-Degree Seeking  
2006-08-17: Active in Program  
2006-08-17: Undergraduate Studies Major CIP: 30.9999

Program: Undergraduate Certificates  
2010-07-29: Active in Program  
2010-07-29: Biomedical Sciences Certificat Major CIP: 26.0102

Print Date: 2023-04-06

. - - - - TSI Status - - - -

Overall Exempt: AD Texas State Degree 19-APR-2010

.  
SB1231 withdrawals from UT Dallas = 0

Unofficial Transcript - UT-Dallas

Name: Kristin Michelle Gillis

Beginning of Undergraduate Record

2010 Fall							
Course		Description		Attempted	Earned	Grade	Points
CHEM 2325		INTRO ORGANIC CHEMISTRY II		3.000	3.000	A	12.000
Instructor:		Mihaela C. Stefan					
HLTH 1322		HUMAN NUTRITION		3.000	3.000	A	12.000
Instructor:		Lora Neita Day					
NSC 3361		BEHAVIORAL NEUROSCIENCE		3.000	3.000	A	12.000
Req Designation:		Core - 030 and 031 Natural Sciences					
Instructor:		Van S Miller					
NSC 4366		NEUROANATOMY		3.000	3.000	A	12.000
Instructor:		Van S Miller					
				Attempted	Earned	GPA Uts	Points
Term GPA	4.000	Term Totals		12.000	12.000	12.000	48.000
Transfer Term GPA		Transfer Totals		0.000	0.000	0.000	0.000
Combined GPA	4.000	Comb Totals		12.000	12.000	12.000	48.000
Cum GPA	4.000	Cum Totals		12.000	12.000	12.000	48.000
Transfer Cum GPA		Transfer Totals		45.000	45.000	0.000	0.000
Combined Cum GPA	4.000	Comb Totals		57.000	57.000	12.000	48.000
Academic Standing Effective 2011-01-03: Good Standing							

2011 Spring							
Course		Description		Attempted	Earned	Grade	Points
BIOL 3455		HUMAN A&P W/LAB I		4.000	4.000	B-	10.680
Instructor:		John Kolar					
BIOL 4345		IMMUNOBIOLOGY		3.000	3.000	A	12.000
Instructor:		John G. Burr					
BIOL 4350		MEDICAL MICROBIOLOGY		3.000	3.000	A+	12.000
Instructor:		Ruben D Ramirez					
HLTH 1100		CAREER EXPLORATNS: HEALTH PROF		1.000	1.000	A	4.000
Instructor:		Kathleen Ann Byrnes					
HLTH 3100		PRE-HEALTH PROFESSIONAL DEVMT		1.000	1.000	A	4.000
Instructor:		James S Wright					
				Attempted	Earned	GPA Uts	Points
Term GPA	3.557	Term Totals		12.000	12.000	12.000	42.680
Transfer Term GPA		Transfer Totals		0.000	0.000	0.000	0.000
Combined GPA	3.557	Comb Totals		12.000	12.000	12.000	42.680
Cum GPA	3.778	Cum Totals		24.000	24.000	24.000	90.680
Transfer Cum GPA		Transfer Totals		45.000	45.000	0.000	0.000
Combined Cum GPA	3.778	Comb Totals		69.000	69.000	24.000	90.680
Academic Standing Effective 2011-05-20: Good Standing							

<b>Undergraduate Career Totals</b>							
Cum GPA:	3.778	Cum Totals		24.000	24.000	24.000	90.680
Transfer Cum GPA		Transfer Totals		45.000	45.000	0.000	0.000
Combined Cum GPA	3.778	Comb Totals		69.000	69.000	24.000	90.680

End of Unofficial Transcript - UT-Dallas



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April 11, 2023

**Via OSCAR US Court portal:**

Hon. Judge Irma Carillo Ramirez  
Northern District of Texas  
Dallas Division  
1100 Commerce Street, Room 1567  
Dallas, Texas 75242

Re: *Kristin G. Mijares – OSCAR Recommendation .*

Dear Honorable Judge Irma Ramirez,

Kristin G. Mijares was an associate attorney I supervised for several years at Schell Cooley Campbell LLP. Kristin is a bright, energetic individual with pleasant professional decorum. She was always a team player, well liked and respected by members of the firm. Without hesitation, I recommend her to you.

Should you have questions or require further information, please don't hesitate to advise.

Very Truly Yours,

*Russ Schell*

Russ Schell

RWS/vlb  
519688



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**MEMORANDUM – ATTORNEY WORK PRODUCT – PRIVILEGED AND  
CONFIDENTIAL**

TO: Natalie Arbaugh  
FROM: Kristin Mijares  
RE: *MorningStar* – likelihood of success on the client’s FMLA violation claim  
DATE: January 11, 2023

**QUESTION PRESENTED**

Can we state a claim for violation of the FMLA (retaliation) based on case law from the Fifth Circuit and Texas federal district courts?

**SHORT ANSWER**

No. Although there is support for the proposition that the MorningStar entities violated the FMLA by retaliating against our client when he took leave to care for his son, we will be unable to show this was an adverse employment action because—as an unpaid, non-contract executive—he will not pass the test used by courts to establish status as an *employee*.

**FACTS**

To state a claim for violation of the FMLA, our client must establish he was an eligible employee at the time of the leave. Because the FMLA does not define “employee,” courts apply a factor test to discern employment status. There is no state equivalent to the FMLA, so Texas courts must follow federal case law.

**DISCUSSION**

The Family and Medical Leave Act of 1993 (“FMLA”), codified at 29 U.S.C. § 2601 *et seq.*, makes it illegal for an employer to interfere with, retaliate against, or discriminate against an employee who exercises his or her right to take FMLA leave. Violators of the FMLA are subject to consequential damages and appropriate equitable relief. 29 U.S.C. § 2617(a)(1).

To establish an FMLA retaliation has occurred, the employee must demonstrate that he/she:

- 1) was protected under the FMLA;
- 2) suffered an adverse employment action; and
- 3) was treated less favorably than an employee who had not requested leave under the FMLA or the adverse decision was made because he sought protection under the FMLA.

*Mauder v. Metro. Transit Auth. of Harris Cty., Tex.*, 446 F.3d 574, 583 (5th Cir. 2006) (citing 29 U.S.C. § 2615(a)(2)).



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The third element requires the employee to show “there is a causal link” between the FMLA-protected activity and the adverse action. *Richardson v. Monitronics Int’l, Inc.*, 434 F.3d 327, 332 (5th Cir. 2005). The Statute of Limitations for FMLA violation claims is either two years following last possible date of the violation (29 U.S.C. § 2617(c)(1)), or three years where the violation was willful (§ 2617(c)(2)). “[T]o establish a willful violation of the FMLA, a plaintiff must show that his employer ‘either knew or showed reckless disregard for the matter of whether its conduct was prohibited by statute.’” *Mozingo v. Oil States Energy, Inc.*, 661 F. App’x 828, 830 (5th Cir. 2016) (citations omitted); see *Singer v. City of Waco*, 324 F.3d 813, 821–22 (5th Cir. 2003) (upholding a jury’s finding of willfulness in the context of the FLSA where the employer admitted that it was aware that its employees were being paid incorrectly and the employer’s attorney advised the employer not to investigate the matter).

We will be unable to prove a willful violation of the FMLA occurred, as this element has been found only in cases where an accompanying willful FLSA violation occurred. See *id.*; see also *Reich v. Bay, Inc.*, 23 F.3d 110, 117 (5th Cir. 1994) (upholding a district court’s finding of willfulness where a government representative notified the employer that its practices violated the FLSA yet the employer continued the practices). Thus, the two-year limitations period applies to our client’s claim and he has until approximately January 2025 to bring his claim.

#### Hurdle 1 – Notice and Policy Compliance

While the employee has a right to take leave under the FMLA, the employee must give his employer notice of his intention to take leave in order to be entitled to it. *Acker v. Gen. Motors, L.L.C.*, 853 F.3d 784, 788 (5th Cir. 2017) (citing 29 U.S.C. § 2612(e)(1), (2)). In a case where the necessity for leave is *foreseeable* (based on planned medical treatment), the employee must make a reasonable effort to schedule the treatment so as not to “disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the family member.” 29 U.S.C. § 2612(e). Additionally, where the need for leave is foreseeable, the employee must provide the employer “not less than 30 days’ notice, before the date the leave is to begin, of the employee’s intention to take leave”, unless the date of the treatment requires leave to begin in less than 30 days, in which case the employee must provide “such notice as is practicable.” *Id.*

In all instances (*i.e.*, whether the need for leave is foreseeable or not), “an employee must comply with the employer’s usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.” 29 C.F.R. § 825.302(d). Failure to comply with the employer’s notice policy in the absence of an unusual circumstance may support the employer’s delay or denial of FMLA leave. See *id.* “[A]n employer generally does not violate the FMLA if it terminates an employee for failing to comply with a policy requiring notice of absences, even if the absences that the employee failed to report were protected by the FMLA.” *Acker v. Gen. Motors, L.L.C.*, 853 F.3d 784, 789 (5th Cir. 2017) (citations omitted). Provided no policy covering FMLA notice exists at MorningStar, we can likely show Vaughn’s leave was not foreseeable and/or that he gave “such notice as [was] practicable” and reasonable given the circumstances of his son’s surgery.



Hurdle 2 – “Employee”

There are two tests to determine whether an individual qualifies as an employee—the control test and the hybrid control/economic realities test—and Texas courts may employ one or both tests. Importantly, the fact that Vaughn is a Limited Partner or President will not dictate which test a court will apply; rather, we should be prepared to argue that Vaughn is an ‘employee’ under either test.

**Test 1: Traditional Control Test**

When faced with circumstances where the statute containing the term ‘employee’ does not helpfully define it (such as in the case of the FMLA), the Supreme Court utilized the conventional master-servant relationship as understood by common-law agency doctrine to define the term. *Clackamas Gastroenterology Assocs., P. C. v. Wells*, 538 U.S. 440, 444–45, 123 S. Ct. 1673, 1677–78, 155 L. Ed. 2d 615 (2003) (citing *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 322, 112 S. Ct. 1344, 117 L.Ed.2d 581 (1992)). The common law focuses on the master’s degree of control over the servant. *Id.* (citation omitted). The Supreme Court extended that doctrine to examine “whether shareholder-directors operate independently and manage [a] business or instead are subject to the firm’s control.” *Wells*, 538 U.S. at 440, 448–51. As with applying common-law rules to the independent-contractor-versus-employee context, the answer to whether a shareholder-director is an employee depends on “all of the incidents of the relationship ... with no one factor being decisive.” *Id.* (citing *Darden*, 503 U.S. at 324).

Courts employ the control test to determine whether an executive qualifies as an employee. *See Wells*, 538 U.S. at 440; *Darden*, 503 U.S. at 324. When a business director seeks to avail himself of the federal employment laws, courts employ the six-factor (control) test:

- (1) whether the organization can hire or fire the individual or set the rules and regulations of the individual’s work;
- (2) whether and to what extent the organization supervises the individual’s work;
- (3) whether the individual reports to someone higher in the organization;
- (4) whether and to what extent the individual is able to influence the organization;
- (5) whether the parties intended that the individual be an employee, as expressed in written agreements or contracts; and
- (6) whether the individual shares in the profits, losses, and liabilities of the organization.

*Id.* (citing EEOC Compliance Manual, No. 915.003 § 2, May 12, 2020).

In the *Wells* case, the issue before the Court was whether the four physician-shareholders who owned a professional corporation and constituted its board of directors counted as employees for purposes of the ADA. 538 U.S. at 440. The Court held that the factors weighed in favor of concluding that the four physicians were not clinic employees. *Id.* at 441. For example, the physician-shareholders controlled the operation of their clinic, shared the profits, and were personally liable for malpractice claims. *Id.* at 451. However, the Court cautioned there may be contradictory evidence in the record and thus reversed and remanded. *Id.*



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The Western District of Texas applied the control test to find that the factors weighed against a police agency's directors qualifying as employees for purposes of the FMLA. *Roden v. Texas Mun. Police Ass'n, Inc.*, No. A-11-CA-809-SS, 2013 WL 12121109, at \*6 (W.D. Tex. Mar. 25, 2013). In that case, the plaintiff worked for the police association pursuant to a three-year employment contract; after being terminated in close temporal proximity to taking FMLA leave, the plaintiff sued the police association. *Id.*, at \*3. The court held that the FMLA applied to the plaintiff's situation only if the association's board members were employees. *Id.*, at \*7. The court reiterated that "the general rule is that board members or directors are not employees, unless, inter alia, they in fact perform the traditional duties of employees, work full time for the putative employer, and report to senior personnel." *Id.* The plaintiff argued that the board members were employees because they received compensation in the form of a small stipend, a company credit card, and reimbursement for lodging, rental cars, and meals while on association business and were thus "effectively on [the] payroll." *Id.* The court was not convinced, as nothing in the record suggested the directors acted as employees of the association "in the traditional sense." *Id.*, at \*8. The court held there was nothing to suggest the directors worked for the association full-time, answered to any supervisor, performed any duties under supervision, or did anything other than acting as directors (*i.e.*, as the organization's masters, rather than its servants). *Id.* The directors' remuneration for their duties as directors, and for attendant expenses, was thus insufficient to render the directors 'employees' for purposes of the FMLA. *Id.*

### Test 2 – Economic Realities/Control Hybrid Test

Courts may employ the hybrid control/economic realities test. *See, e.g., Weisel v. Singapore Joint Venture, Inc.*, 602 F.2d 1185 (5th Cir. 1979); *Usery v. Pilgrim Equipment Co., Inc.*, 527 F.2d 1308 (5th Cir. 1976); *Mednick v. Albert Enterprises, Inc.*, 508 F.2d 297 (5th Cir. 1975). In addition to the six control factors, courts add an economic realities portion which focuses on "whether the alleged employees, as a matter of 'economic reality,' are 'economically dependent' on the business to which they supply their labor and services." *Brock v. Mr. W Fireworks*, 814 F.2d 1042, 1043 (5th Cir. 1987). Though the hybrid test has primarily been used in the 'employee versus an independent contractor' setting, Texas courts have used it to determine whether an executive is an employee. *See, e.g., Williams v. Henagan*, 595 F.3d 610, 620 (5th Cir. 2010); *Watson v. Graves*, 909 F.2d 1549, 1553 (5th Cir. 1990); *see also Goldberg v. Whitaker House Coop.*, 366 U.S. 28, 33, 81 S. Ct. 933, 936, 6 L.Ed.2d 100 (1961) (articulating test).

As part of the hybrid test, courts employ five considerations to determine the degree of dependence of the alleged employee to the particular business:

- (1) the degree of control exercised over the putative employee's work by the would-be employer;
- (2) the extent of the relative investments of the worker and the alleged employer;
- (3) the degree to which the worker's opportunity for profit or loss is determined by the alleged employer;
- (4) the skill and initiative required in performing the job; and
- (5) and the permanency of the relationship.



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*Hickey v. Arkla Indus., Inc.*, 699 F.2d 748, 751–52 (5th Cir. 1983).

Importantly, no one factor has more weight than any other, and all factors need not be present for one to be an employee. *Id.* The Western District of Texas applied the test to determine whether an airline manager was an employee versus a volunteer or an independent contractor. *See Starr v. Texas Skyways, Inc.*, No. SA-20-CV-1299-JKP, 2022 WL 329329 (W.D. Tex. Feb. 2, 2022). The plaintiff was a test pilot for Texas Skyways, and the company did not pay or otherwise compensate him during the three years he worked for the company. *Id.*, at \*1. However, the plaintiff contended that as a test pilot and Skyways’ director of operations, he was under the economic control of the company. *Id.*, at \*2. The defendants countered “there was never any agreement” that the plaintiff would be paid for work and that in three years of “hanging around the facility at times of his own choosing,” “occasionally test flying an airplane,” and calling himself “director of operations,” he never asked to be paid. *Id.*

The court noted that, though the parties may point to evidence “relevant to their competing theories of the nature of [their] relationship...ultimately, no matter what was promised or documented, what will be dispositive [is] be how the parties in reality behaved.” *Id.* (citation omitted). The court cautioned that “the ability of a worker to financially support him or herself independent of the job at issue or whether an alleged employee’s salary from another job is sufficient to financially support him or her is not relevant to whether the worker is an employee of the alleged employer.” *Id.* (emphasis added). “While the reliance on an alleged employer for subsistence may weigh in favor of employee status, the fact that an alleged employee does not need to be paid by the alleged employer in order to survive does not weigh against employee status.” *Id.* Similarly, the fact of other employment is not dispositive of “economic reality”—a worker may have multiple jobs doing similar work for different companies and not be an independent contractor. *Id.*

After deeming the economic realities test non-dispositive, the court looked to control factors, including:

- (a) whether the alleged employee or alleged employer imposes rules or restrictions;
- (b) who makes advertising decisions;
- (c) who sets the prices, makes payment arrangements, manages the books and back-office activities;
- (d) whether any contract between the alleged employee and employer is arms-length;
- (e) whether the alleged employee can provide services to or negotiate with other businesses;
- (f) whether the alleged employee engages in the ordinary activities of running a business such as hiring employees, setting hours, making policy, instituting procedures; and
- (g) the degree to which the alleged employee exerts control over their business life independent of the alleged employer, i.e., whether the alleged employee has a “viable economic status that can be traded to other [ ] companies.”

*Id.* (citing *Usery*, 527 F.2d at 1312–13).



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The court emphasized that the above considerations determine who controls the “meaningful aspects” of the business; if the meaningful aspects of the business—advertising, dealing with other businesses, price setting, payment arrangements—are controlled by the alleged employer, it is likely the alleged employee is under the alleged employer’s control. *Id.* Conversely, when the alleged employee “exerts such a control over a meaningful part of the business that she stands as a separate economic entity” it is likely the alleged employee is not controlled by the alleged employer. *Id.* With regard to the first factor in this case, the court found that all the meaningful aspects of the business were controlled by the defendants. *Id.*, at \*5. Plaintiff test-flew airplanes, worked on assigned tasks or projects, and liaised with customers; he set his own hours and at the same time also worked as a pilot for a commercial airline. *Id.* Defendants contended the plaintiff was not required to be at the facility at any particular time, but rather showed up “when he wanted” and “could leave anytime he wanted”; and he “showed up sporadically, usually without any advance notice to the company.” *Id.* However, the court noted that typically someone who just “hangs around” at a business does not test-fly planes, deal with customers, and hold important company information. *Id.* Weighing the evidence, the court determined the first factor weighed in favor of finding an employment relationship. *See id.*

With regard to the second factor (relative investments), the court compared “the worker’s individual investment to that of the alleged employer.” *Id.* Aside from purchasing his own business cards and replacing the time-clock at his own expense, there was no evidence that the plaintiff made any financial investment in Texas Skyways or in any tools or equipment that were required to complete the work he did for the company. *Id.*, at \*6. This factor weighed against the plaintiff’s argument. *See id.* The third factor, opportunity for profit or loss, involved an examination of “the degree to which the worker’s opportunity for profit or loss is determined by the alleged employer.” *Id.* (citations omitted). “In other words, who controls the major determinants of the amount of profit which the worker could make.” *Id.* “Major determinants” include a worker’s ability to control his/her own costs or a to control “customer volume” or other elements of the sales cycle that play a “vital role” in the opportunities to increase profit. *Id.* (citations omitted). Examples of major determinates may also include the worker’s ability to “determine the days and times that they were available to work;” the worker’s ability to work efficiently; the worker’s proficiency in performing the job; the worker’s ability to profit from performing other or additional work for customers; and the worker’s ability to “market himself.” *Id.* (citation omitted). Based on the work the plaintiff did at Texas Skyways, there was no evidence that, had the defendants paid the plaintiff, he would have had opportunities to play (or had played) a vital role in increasing profits. *Id.* While he took credit for the sale of one airplane, the tasks the plaintiff undertook at Texas Skyways did not allow the inference that he was in sales or that he was an integral part of a sales team. *Id.* There was also no evidence that the plaintiff incurred significant costs associated with the tasks he performed at Texas Skyways, nor was there any evidence that his increased proficiency or efficiency could have impacted his ability to profit from his work. *Id.* Thus, this factor weighed in favor of finding plaintiff was an employee.

The court measured the fourth factor—skill and initiative—by the alleged employee’s “unique skill set, or some ability to exercise significant initiative within the business.” *Id.* (citation omitted). “Skills that are deployed doing routine work and those that are common to all employees



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in that position” weigh against finding that a worker is an independent contractor. *Id.* The court noted that, while test-flying airplanes appears to involve special skills, the parties agreed that “among those who perform this work, one test pilot is as good as the next.” *Id.* As to initiative, the court found there was nothing to indicate that the plaintiff’s interactions with Texas Skyways customers could enrich him apart from his relationship with Skyways. *Id.* He was also not enriched by an initiative he undertook—he recommended the abandonment of one project for another, and the company profited from adopting this recommendation, yet he was not financially rewarded for this initiative. *Id.* This factor weighed in favor of an employment relationship. *See id.*

In examining the fifth factor, permanency, the court considered the following: exclusivity; length of the relationship; how easily a worker could terminate the relationship and then compete against the alleged employer; whether work was performed on a project-by-project basis; and if the worker moved from job to job, company to company, or state to state. *Id.*, at \*7 (citations omitted). As to exclusivity, it was undisputed that during the relevant time period the plaintiff was an employee of a commercial carrier. *Id.* As to the length of the relationship, whether characterized as “hanging around” or “working for” Texas Skyways, the court noted that the plaintiff consistently “showed up” for at least two years. *Id.* And as to itinerancy, Plaintiff worked on “projects” but did not work on a project-specific basis, nor did he move from job to job, company to company, or state to state. *Id.* The fifth factor thus weighed in plaintiff’s favor. *See id.*

The court circled back to the economic realities test and examined the defendants’ argument that during the time period at issue the plaintiff was employed as a pilot with a commercial carrier and thus was never “economically dependent” on Skyways. *Id.* The defendants also pointed out that the plaintiff never applied for a job with Skyways and there was no paper indicating an employment relationship was formed. *Id.* Further, he had no work schedule but “came around” and “left whenever he wanted to.” *Id.* The court noted that the plaintiff’s flexible work schedule was not significant because what is dispositive was “how the parties in reality behaved.” *Id.* (citation omitted). By signing an employment agreement update, the plaintiff agreed to abide by Texas Skyways policy. *Id.* Importantly, the defendants were in a position to exercise all necessary supervision over him; the fact that the defendants chose not to exercise such supervision did not alter the quality of the relationship. *Id.* Additionally, the plaintiff told customers he was “operations manager” and the defendants did not publicly object. *Id.* He further exchanged substantive emails with Texas Skyways customers—emails that were sent to a Texas Skyways email address and placed in the plaintiff’s box at the company—and the defendants did not object. *Id.* Even though there were other test pilots available to test fly Texas Skyways planes—who, arguably, would have been paid—the defendants were happy to “allow” the plaintiff to conduct test flights for free. *Id.* His tasks were done in the course of Texas Skyways’ business. *Id.* The court concluded that all these behaviors were “typical of an employee-employer relationship and support[ed] a finding that [the plaintiff] was not an independent contractor but rather an employee of Texas Skyways.” *Id.*

This case is unique in that the defendants here argued the plaintiff was a volunteer. *See id.* The court noted that the Supreme Court has held that the statutory and common-law definitions of ‘employee’ are “not intended to stamp all persons as employees who, without any express or implied compensation agreement, might work for their own advantage on the premises of another” nor do the definitions “sweep under the Act each person who, without promise or expectation of





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compensation, but solely for his personal purpose or pleasure, worked in activities carried on by other persons either for their pleasure or profit.” *Id.* (citing *Tony and Susan Alamo Found. v. Sec’y of Labor*, 471 U.S. 290, 295 (1985)). The court noted that if the plaintiff “reasonably expected to be compensated [he] should be classified as an employee or if [he] had no expectation of compensation [he] should be classified as a volunteer.” *Id.* This issue was nonconclusive as the evidence tended to show that any compensation agreement regarding the plaintiff’s work for Texas Skyways was made verbally between the plaintiff and a director of Texas Skyways (who was then deceased). *Id.* The court looked to the fact that the plaintiff and one of the defendants entered into a “Real Estate Purchase Agreement for Texas” which stated in part that the plaintiff would continue to serve as Texas Skyways’ Director of Operations for two years for the sum of \$50,000 per year. *Id.* Based on this, “a reasonable fact finder could infer that [the plaintiff] was regarded as the Director of Operations for Texas Skyways and that he expected and was promised compensation.” *Id.* However, the record did not show whether this transaction contemplated deferred compensation for past work or was only for prospective work. *Id.* The fact that the plaintiff never asked to be paid for his work at Texas Skyways “is not dispositive of whether an individual is classified as an employee or a volunteer.” *Id.* Thus, there was insufficient evidence to determine conclusively whether the plaintiff could be a volunteer. *Id.*, at \*8.

Although the court here found for the plaintiff on the independent contractor versus employee issue, the case illustrates a possible avenue whereby defendants may argue that an unpaid director or manager was a volunteer. As above, this argument is more likely to succeed where there is no signed employment agreement and where there was no promise or expectation of compensation. Based on the facts of Vaughn’s case, he can likely satisfy both the control and hybrid tests to show he was an employee of *MorningStar*. Though he had no salary or employment agreement, he received other benefits (insurance, parking, etc.) and expected to receive bonus and performance options based on time he put into serving the *MorningStar* entities. Though he had employees under him and could hire or fire them, this factor is not in and of itself indicative of the requisite level of control. That he was not financially dependent on *MorningStar* and bore the titles of ‘President’ and ‘Limited Partner’ during the relevant time period are similarly non-dispositive.

Below are the two tests as applied to the facts at hand:

Test 1 – Control (Director vs. employee):

- (1) whether the organization can hire or fire the individual or set the rules and regulations of the individual’s work – the organization can and did terminate Vaughn; we need to discern what, if any, rules were in place governing his work. This factor weighs in favor of Vaughn being an employee.
- (2) whether and to what extent the organization supervises the individual’s work – Vaughn was unsure of the degree to which he was supervised, but one would assume he would have been terminated long before now had someone not been above him and making sure he was actually putting in man-hours for the *MorningStar* entities. Thus, this factor weighs in favor of Vaughn being supervised to a moderate degree, at least.
- (3) whether the individual reports to someone higher in the organization – Vaughn was unclear on this, but in order to ensure the entities’ business ran smoothly, Vaughn would

have had to make reports to someone (at least regarding how his sector of the business was coming along). This factor weighs in favor of Vaughn being an employee.

(4) whether and to what extent the individual is able to influence the organization – Vaughn stated he was able to influence business a bit (e.g., by making sales and bringing in clients); however, he also was unable to influence the business to a significant degree in meaningful ways (for example, he could not convince the others to take up litigation on behalf of the business for the theft of company secrets). This factor weighs in Vaughn's favor.

(5) whether the parties intended that the individual be an employee, as expressed in written agreements or contracts – this factor likely weighs against us, as no doubt Bob will argue he never told Vaughn or gave him cause to believe he would get a salary or bonus at any time; we also lack a contract.

(6) whether the individual shares in the profits, losses, and liabilities of the organization – we know he did not share in the profits *per se* as he was awarded nothing over his 10 years (though he did invest significantly at the formation). The LLC Agreement disclaims vicarious liability (2.04); however, members share in the losses and profits of the organization *pro rata* (5.05). This factor likely weighs in favor of Vaughn being an employee, regardless of his status as 'President' and 'Limited Partner' during the relevant time period.

Test 2 – Economic Realities/Control: employee vs independent contractor vs volunteer:

a. Control:

- (1) the degree of control exercised over the putative employee's work by the would-be employer – requires us to consider: imposition of rules or restrictions; who makes advertising decisions; who sets the prices, makes payment arrangements, manages the books and back-office activities; whether any contract exists; whether Vaughn can provide services to or negotiate with other businesses; whether he engages in the ordinary activities of running a business such as hiring employees, setting hours, making policy, instituting procedures; and the degree to which Vaughn exerts control over his business life independent of *MorningStar* and/or Bob, i.e., whether he has a viable economic status that can be traded to other companies. In this case, most of the meaningful aspects of *MorningStar*'s business were controlled by others; Vaughn worked on assigned tasks or projects and liaised with potential customers, and the fact that he set his own hours and schedule is not dispositive. However, the factors weighing against us are that there is no contract, Vaughn was responsible for administrative/HR duties such as may be considered part of running a business. He could also hire/fire. Thus, whether he had control over the business, and whether *MorningStar* and/or Bob had control over him, is unclear and could likely be argued either way.
- (2) the extent of the relative investments of the worker and the alleged employer – Vaughn's contribution was secondary to other members' contributions, though still significant. This factor is inconclusive.
- (3) the degree to which the worker's opportunity for profit or loss is determined by the alleged employer – this factor weighs in Vaughn's favor, as the opportunity for profit was clearly determined by Bob and/or the LLC (evidenced by Vaughn being



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uncompensated for 10 years, yet the entity is solvent in that it did not declare bankruptcy or wind up except for the Southland venture; also evidenced by the fact that work duties were handed down by Bob and/or originated from him).

- (4) the skill and initiative required in performing the job – the ‘skill’ factor weighs against us, as Vaughn has much experience and skill in the oil & gas business and has been successful in his ventures. His skills are not “common” among all workers, but rather are unique to him through years of experience. On the other hand, the ‘initiative’ factor indicates Vaughn was not enriched by an initiative he undertook (he made recommendations and referrals, and the company profited from adopting these recommendations, yet he was not financially rewarded for this initiative) and this weighs in favor of an employment relationship.
- (5) and the permanency of the relationship – to weigh this factor we must consider: exclusivity; length of the relationship; how easily a worker could terminate the relationship and then compete against the alleged employer; whether work was performed on a project-by-project basis; and if the worker moved from job to job, company to company, or state to state. As to exclusivity, during the relevant time period the plaintiff Vaughn may not have been exclusive to *MorningStar*. As to the length of the relationship, Vaughn consistently worked for 10 years. And as to itinerancy, Vaughn did not work on a project-specific basis and did not move from job to job. Thus, this factor weighs in Vaughn’s favor.

b. Economic Realities:

Was Vaughn financially dependent on *MorningStar* and/or what was the reality of the parties’ interactions? We can likely pass this test. First, Vaughn may have been employed outside of *MorningStar* (or was sufficiently wealthy from the XTO sale that he was not “economically dependent” on *MorningStar*). Second, there is no paper indicating an employment relationship was formed. Third, Vaughn had no set work schedule. However, Bob and/or the entities were in a position to exercise all necessary supervision over Vaughn (the fact that they chose not to exercise such supervision did not alter the quality of the relationship). His tasks were done in the course of *MorningStar*’s business. These behaviors are typical of an employee-employer relationship.

Hurdle 3 – Employee “Prejudiced By” the Violation

Once the individual has shown he/she is an employee, and that a violation has occurred, the employee must still prove actual damages under the FMLA, *i.e.*, that he/she has been prejudiced by the violation. § 2617(a)(1) (the employer is liable only for compensation and benefits lost “by reason of the violation,” for other monetary losses sustained “as a direct result of the violation,” and for “appropriate” equitable relief, including employment, reinstatement, and promotion).

The Fifth Circuit has examined this issue several times, and in each case its ruling turned on whether the employer’s FMLA interference somehow caused an employee’s termination. *See Lubke v. City of Arlington*, 455 F.3d 489 (5th Cir. 2006) (lack of notice led to a lack of medical





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certification and the loss of a job); *Downey v. Strain*, 510 F.3d 534, 541 (5th Cir. 2007) (plaintiff “proved that she was actually prejudiced by her employer’s noncompliance with the [FMLA notice] regulations: had she received individualized notice, she would have been able to postpone her surgery ... and her position ... would not have been jeopardized”); *Bernard v. Bishop Noland Episcopal Day Sch.*, 630 F. App’x 239, 242–43 (5th Cir. 2015) (finding “the lack of individualized notice had nothing to do with [the plaintiff] not taking leave or losing her job” as nothing suggested that the plaintiff would have taken additional leave if she had known that she had a right to medical leave under the FMLA; thus, she was not prejudiced by her employer’s lack of notice); *Hart v. Comcast of Houston, LLC*, 347 F. App’x 978, 980 (5th Cir. 2009) (plaintiff was not harmed by any lack of notice because the evidence showed the employee was allowed his requested leave and to return to the same position with the same pay and was fired for failing to return to work); *Campos v. Steves & Sons, Inc.*, 10 F. 4th 515, 527 (5th Cir. 2021) (no prejudice where employee could not show that, but for the deficient notice practice, he would have altered his leave time); *Gabriel v. McDonough*, No. 4:20-CV-02588, 2021 WL 4593984, at \*2 (S.D. Tex. Oct. 6, 2021) (plaintiff did not take unpaid FMLA leave as she was later compensated for it, and she furnished no facts showing that she actually took FMLA leave).

Based on the facts here, even if we show Vaughn was an employee and that he gave reasonable notice pursuant to any company policies, we will be unable to show Vaughn was prejudiced by reason of his taking FMLA leave. He was not compensated before or after taking leave, so there was no compensable financial injury. Though he was terminated (arguably because of his taking leave), his financial position after did not change as compared to before. We could argue the adverse action caused him to suffer financially in that he was unable to receive the expected profits from the upcoming IPO; however, a court’s focus is not on any anticipated financial gain, but rather on definite loss of compensation due solely to his taking leave. An employer is liable only for “compensation and benefits” or “other monetary losses” sustained as a direct result of the violation; because Vaughn suffered no loss (his benefits were intact before and after) we likely cannot show he suffered actual damages.

We could argue he is due equitable relief (reinstatement or promotion), but our success on this claim likely will not result in monetary damages for Vaughn. There is also the confounding issue of Vaughn initially refusing to accept the company’s offer to reinstate him. This undercuts any argument there is compensable prejudice caused by his taking leave because his being reinstated to his same position (though later fired) breaks the requisite direct chain of causation. We will thus be unable to show Vaughn was prejudiced by reason of *MorningStar*’s FMLA violation.

## CONCLUSION

Though we could likely satisfy the ‘notice’ and ‘employee’ prongs of an FMLA retaliation claim, we are unable to show Vaughn was prejudiced by reason of an adverse employment action. Examining these factors together, we cannot state a claim for an FMLA violation based on retaliation against *MorningStar*.

## Applicant Details

First Name	<b>Abrar</b>
Last Name	<b>Omeish</b>
Citizenship Status	<b>U. S. Citizen</b>
Email Address	<a href="mailto:aeo36@georgetown.edu">aeo36@georgetown.edu</a>
Address	<div> <b>Address</b>  <b>Street</b>  <b>3133 Barkley Drive</b>  <b>City</b>  <b>Fairfax</b>  <b>State/Territory</b>  <b>Virginia</b>  <b>Zip</b>  <b>22031</b>  <b>Country</b>  <b>United States</b> </div>
Contact Phone Number	<b>7035877104</b>

## Applicant Education

BA/BS From	<b>Yale University</b>
Date of BA/BS	<b>May 2017</b>
JD/LLB From	<b>Georgetown University Law Center</b>
	<a href="https://www.nalplawschools.org/employer_profile?FormID=961">https://www.nalplawschools.org/employer_profile?FormID=961</a>
Date of JD/LLB	<b>May 20, 2023</b>
Class Rank	<b>School does not rank</b>
Does the law school have a Law Review/Journal?	<b>Yes</b>
Law Review/Journal	<b>No</b>
Moot Court Experience	<b>Yes</b>
Moot Court Name(s)	

## Bar Admission

## Prior Judicial Experience

Judicial Internships/ Externships	<b>Yes</b>
Post-graduate Judicial Law Clerk	<b>No</b>

### **Specialized Work Experience**

Specialized Work Experience **Appellate, Immigration, Pro Se**

### **Professional Organization**

Organizations	<b>Just The Beginning Foundation</b>
	<b>The Appellate Project</b>

### **Recommenders**

Gornstein, Irv  
ilg@law.georgetown.edu  
Edelman, Peter  
edelman@law.georgetown.edu  
Berger, Eric  
Eric.Berger@law.georgetown.edu  
9176796706  
Treanor, William  
wtreanor@law.georgetown.edu

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

Dear Honorable Judge and Reviewing Clerks,

I am writing to express interest in working as your clerk in the next term. I imagine you receive many applications for this role. I am writing with a specific interest in working for your honor, as I am moved by the strength and significance of your opinions. I am currently a clerk for the Supreme Court Institute at Georgetown and want to bring everything I have to support you and your efforts towards justice.

I am a third-generation public servant and second-generation product of American public schools. I have a deep loyalty to community and hope to serve the land that shaped me. I been already in many ways—from supporting local scout troops, to building a free tutoring and mentorship organization for thousands of underprivileged youth, to holding elected office in the nation’s toughest years to be a School Board member. I am now eager to spend the next few decades serving in our legal institutions. As I add value to your team, I hope this clerkship starts my journey to contribute and gain understanding of the law and justice system.

At the same time, I have applied myself at the highest levels of intellectual curiosity and vigor to understand contrasting views. In a similar way that your honor relies on clerks to prepare draft opinions, I have written public justifications for my own decisions—delineating arguments clearly, contending with alternate viewpoints, and deriving outcomes from various sources through an open mind. Our role here, to apply the law in ways that contend with new issues and articulate coherently a consistent pathway to fairness, is powerful. I would like to be part of supporting your honor to develop and communicate our best thinking—from sides despite the aisle—for justice.

I have partaken in several senior level appellate courses to develop my reasoning and writing skills. In addition to those listed in my transcript, I am currently registered taking Brian Wolfman’s Appellate Immersion Clinic and a Supreme Court workshop. Moreover, my public role over the past three years has required me to make hundreds of high-stakes legal decisions under sustained pressure and with little time, several of which reached the United States Supreme Court. I understand the stakes of the work you do and the importance of even the slightest mistake—from a lazy argument to a misplaced citation or typo. I take seriously the need for attention to detail, diligence, advance planning, and hard work. This approach did not start today—it comports with my track record as one among very few to successfully complete the intensive major track with a nearly-4.0 GPA in recent Yale University history, and a 4.0 unweighted GPA prior to that. This is also consistent with the reasons I am a Blume Public Interest Fellow at the Law Center, an honor given to only six students amidst 9,000 applicants.

As you can see from my writing sample, I have already written bench memos, draft opinions, and research reports for judges I have supported. I have also advised them on critical decisions involving novel legal questions, and prepared docket charts and timelines to support their day-to-day functions. For one judge, I even took it upon myself to prepare case summaries for his CLE seminar. I have had the privilege of refining my legal intuition through tutelage at varying levels, including Judge Cornelia Pillard of the US Court of Appeals for the DC Circuit, Judge Zia Faruqui of the US District Court of DC, Justice Donald Lemons of the Virginia Supreme Court, and Judge Daniel Ortiz of the Virginia Court of Appeals. These judges have taught me the importance of objectivity in legal thinking, and the power of intellectual expansion and flexibility to examine issues from all perspectives while respecting the long-standing tradition and its underlying values. I am eager to bring these skills and instincts to support you from the first day, and I am eager to proactively plan for goals that advance your honor’s legal vision.

I am specific about judges for whom I seek to work, and I write out of my belief in your approach, and admiration for some of the decisions you have made. I have much more to offer than this page will allow, and I look forward to sharing more with you. I hope you will see the combination of my loyalty, passion, attention to detail, hard work, and overall devotion as a great fit.

Thank you for your consideration. I do sincerely look forward to connecting with you.

Very Respectfully,

Abrar Omeish

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703-865-6797 (h)

**Abrar Omeish**  
<http://www.linkedin.com/pub/abrar-omeish/47/611/2b5>  
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3133 Barkley Drive  
Fairfax, VA 22031

## Education

### Georgetown University, Washington, DC

- Juris Doctor and Master of Public Policy (dual JD/MPP), expected May 2023; student of Judge Cornelia Pillard, Irv Gornstein, Brian Wolfman.
- Blume Public Interest Fellow- full merit scholarship awarded to six students per class through a rigorous process from over 9,000 applicants

### Yale University, New Haven, CT (August 2013 - May 2017)

- Double Bachelor's with Distinction: Political Science (Intensive Major Track- first in recent history to complete); Modern Middle East Studies
- Nakanishi Leadership Prize nominee; Yale MacMillan Center Research Assistant; Yale Center for Language Study Teaching Fellow
- Additional studies in Istanbul Zaim University, Ibn Haldun University, University of Jordan, Granada Summer School Oxford/Berkeley partnership

### James W. Robinson Secondary School, Fairfax, VA (September 2009 - May 2013)

- International Baccalaureate Diploma, over 40 IB points, extended essay in politics; Advanced Diploma and top class rank, 4.0/4.0 unweighted GPA

## Employment

### Supreme Court Institute, Georgetown University, Washington, DC

#### Court Clerk, January 2023 – present

- Prepare bench memos, case presentations, pre-moot case conferences, oral argument notes, and post-mortem memos; assist moot court justices.

### Fairfax County School Board, ([www.abraromeish.com](http://www.abraromeish.com)), Fairfax, Virginia

#### Member At-Large, January 2020 – present

- Manage a three billion dollar budget; represent 1.2 million constituents in nine districts who speak over 200 languages; oversee senior staff
- Equal access/opportunity champion; decisionmaker on complex and diverse legal issues, including two in the Supreme Court
- Successfully returned 180,000+ kids to school safely; navigated pandemic; board liaison to the County Planning Commission and the City of Fairfax
- Received over 161,000 votes countywide as the nation's first Libyan elected and Virginia's youngest and first Muslim woman in office

### United States Department of Education, Office of the General Council (OGC), Washington, DC

#### Summer Legal Intern, May 2022 – August 2022

- Developed case briefs on new Supreme Court decisions and supported work for annual Department overview presentation event
- Provided internal audit and draft revisions of federal prayer guidance for schools and updated guidance per new Supreme Court decisions
- Prepared legal memo on possible arguments in future decision appeals to administrative law judge on university grant compliance
- Identified potential statutory interpretations and organized legal research to advance educational and vocational programming for Native Americans

### Virginia Court of Appeals, Office of the Honorable Judge Daniel E. Ortiz, Fairfax, Virginia

#### Summer Legal Intern, May 2022 – August 2022

- Conducted legal research on various felony charges, accompanying assignments of error, and standards of review
- Prepared appellate bench memo for Judge on recommended decision with legal arguments and proposed interrogatories for both parties
- Verified and revised opinion citations; produced summaries of about ten Virginia Supreme Court case decisions for the Judge's state CLE seminar

### Federal Legislation Clinic, Georgetown Law Center, Washington, DC

#### Student Attorney, January 2022 – May 2022

- Supported congressional advocacy group to meet client goals; developed expertise on portions of the National Defense Authorization Act
- Engaged in research and legislative drafting for federal right of action legislation (*Bivens* bill); contributed to its Congressional strategy
- Developed a policy memo consolidating 1,000+ pages of primary sources and research on Department of Defense reorganization proposals
- Authored a background memo on government use of Controlled Unclassified Information (CUI) for staff and congressional use
- Prepared staff for briefings and filled in when necessary; published one-pager documents to support advocacy goals ([example](#))

### United States Department of Education, Office of Special Education and Rehabilitative Services (OSERS), Washington, DC

#### Fall Trainee, September 2021 – January 2022

- Drafted federal model guidance on mental health with White House Domestic Policy Council for publishing to states and localities; developed feedback tracker for collaboration among various agencies
- Prepared alternative design proposal for Department designations of Technical Assistance Centers (TACs)

### United States District Court for the District of Columbia, Office of the Honorable Judge Zia Faruqi, Washington, DC

#### Summer Intern, May 2021 – August 2021

- Prepared daily case bench memos to advise judge on scheduled cases; assembled docket charts on JENIE; took notes on judge decisions and drafted judicial orders based on hearing outcomes
- Conducted legal research on novel seizure question and produced detailed memo for judge on recommended action
- Drafted judicial opinion on complex Fourth Amendment federal law decision

### Laborers' International Union of North America (LiUNA), Mid-Atlantic Region Office, Reston, VA

#### Peggy Browning Fellow, July 2021 – August 2021

- Prepared legal memo on the *laches* defense; prepared legal memo on present law relating to forced arbitration and changes per recent decisions
- Conducted legal research; documented client grievances; prepared client documents and took thorough site visit notes
- Analyzed National Labor Relations Board data for ongoing litigation project; prepared FOIA request to NLRB

### The HMA Law Firm, McLean, Virginia

#### Legal Fellow, January 2019 – May 2019

- Instituted a two-pronged case approach: initiated and supervised case completion; developed advocacy plans to expedite and finalize cases
- Engaged clients in multiple languages and formulated leading questions to support their needs; identified necessary filing avenues for their cases

**Democratic National Committee, Washington, DC**

Senior Organizer, Political and Organizing Department, May 2017 – December 2017

*Recruited by Deputy Chairman Keith Ellison as a policy advisor on the progressive values team after the agenda compromises in the party*

- Built national millennial outreach program and systemized structure for long-term, future activation; effectively utilized VAN
- Utilized structure to secure record-breaking Virginia victories in all statewide races for the VA Coordinated Campaign
- Mobilized over 100 youth teams to organize hundreds of events and contact tens of thousands of voters; coordinated training/development for teams
- Recruited shifts in multiples of the team total (1,000+ vs. ~300) and in tenfold of the team goal; participated in persuasion and training activities

**Office of the Attorney General for the District of Columbia, Washington, DC**

Equity Intern, Public Interest/Civil Litigation Division, May 2016 – August 2016

*Recruited personally by Deputy Attorney General Natalie Ludaway*

- Co-led legal team on class action involving over 1,000 files under an unexpected turn-around of less than two months
- Researched appropriate information for case formation and suggested argumentative strategies; edited legal motions, briefs, and responses
- Instituted various long-term cataloging methods for legal cases of 30+ years; organized case exhibit and files on Relativity; conducted legal research

**Yale University Office of Career Strategy, Washington, DC**

Director, Yale in DC Program, May 2015 – May 2016

- “Greatest program and highest value-added since its inception.” - led the program through its tenth anniversary and organized dignitary gala
- Organized over 70 events in the span of about 40 days that involved over 1,500 students and alumni; report of accomplishments available [here](#)
- Envisioned, built, and sustained summer mentorship program (100+ pairs)
- Recruited over 200 new alumni in top ranking DC positions (e.g. Bob Woodward, Thomas Pickering, Howard Dean, Brookings President)
- Developed training resources and compiled material packets for successors; instituted systems of news, follow up, confirmation, and gratitude
- Mediated between university officials and DC influencers to strengthen the program for future years; cultivated over 100 new relationships

**Booz Allen Hamilton: Cybersecurity- Enterprise Information Security Team, Washington, DC; Herndon/McLean, VA**

Information Assurance Policy and Compliance Analyst, June 2014 – August 2014

- Published Cybersecurity Awareness and Personally Identifiable Information/Protected Health Information guidance; drafted Information Categorization policy and procedure; developed and edited Information Security/Protection Training course for all staff
- Generated cybersecurity awareness material inventory, updated databases, recreated and managed internal webpages; screened content for equity

**US Department of State Bureau of Information Resource Management, Washington, DC**

Virtual Student Foreign Service Officer (assigned to Libya), August 2012 – January 2014

- Crafted the inaugural State Department program in the new Libya: provided consulting services on Constitutional Development, formulated curricula on democracy, identified key leaders on the ground, presented lessons via teleconference (English, Arabic)

**United States Congress Office of Congressman James P. Moran, Washington, DC**

Special Aide to Legislative Director and Legislative Assistants, May 2013 – August 2013

- Drafted bill on Peace Corps health services, wrote policy briefs for Congressman, met with dignitaries on his behalf
- Utilized internal logging technologies, led Capitol tours, represented office at events, responded to constituent mail/calls

**Additional Leadership Experience**

**Bernie Sanders for President 2020**

Virginia Co-Chair, Superdelegate, DNC Rules Committee Appointee, February 2020 – June 2020

- Elected as a PLEO: Public Leader/Elected Official (Superdelegate) to the Democratic National Convention 2020; represented at high profile events
- Appointed to DNC Rules Committee, among four in Virginia with Jeff Weaver (fmr manager); advised; drafted resolutions and mobilized coalitions

**Coalition, No Muslim Ban Ever Campaign (<https://www.nomuslimbanever.com>)**

Spokesperson, January 2017 – January 2020

- Strategized with national coalition partners on response to Trump’s Muslim ban; developed messaging and participated in Hill briefings, press conferences, and other media-heavy events to successfully make reversing this ban Biden’s first action in office.

**Transition Team, Governor-Elect Ralph Northam, Commonwealth of Virginia**

Volunteer Team Member, November 2017 – January 2018

- Aided management of policy working groups on local government, education, workforce, trade/commerce, technology, opioids, veterans, etc.
- Advised in change management and identified community leaders of long-standing relationships for potential leadership within the administration

**GIVE (Growth and Inspiration through Volunteering and Education), LLC, Fairfax County, VA**

Co-founder, President, June 2009 – present ([www.giveyouth.org](http://www.giveyouth.org))

- Built completely youth-run, youth-led organization of 12,000+ associates, 10,000+ beneficiaries, over 15,000 dollars in net assets, 20 locations
- Recruited members, liaised with government, school system, and community, managed centers, hired executive team, developed program curriculum, trained volunteers and executives, published children’s book
- Legal and financial consultant: obtained 501c3 status for the organization, managed portfolios and charity account systems, organized robust fundraising campaigns, wrote founding documents, renew membership and status every year

**Other Public Service Experience:** At-Large Consumer Protection Commissioner (2017-20), Walden Peer Counselor (2016-2017), Fairfax County Student Human Rights Commission (Chair, 2011-2013), Girl Scout Mentor (2013-present), GSCNC- Board Member, GSCNC- National Delegate (2011-13), Libyan Constitution Project (2011), Interfaith Youth Action Group, Tony Blair Faith Foundation (2009-11)

**Awards:** Phi Beta Kappa of DC Award, Yale Nakanishi Prize for Exemplary Leadership nominee (2017), Northern Virginian of the Year, Women Who Mean Business (WBJ), Women to Watch (Running Start), Byrd Leadership (Byrd Family and VA Supreme Court), Virginia Peace Award (Area faith leaders), Principal’s Leadership (Herff Jones), President’s Gold Award (US President’s Council on Service), President’s Award (Girl Scouts)- chosen among tens of thousands, Gold Award (Girl Scouts), Model Citizen (Girls State, Longwood University), Telly Award

**Languages:** English (native), Arabic (fluent—written and spoken), Spanish (professional written, proficient spoken)

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Abrar Esam Omeish  
GUID: 808572513

Course Level: Juris Doctor

Entering Program:

Georgetown University Law Center  
Juris Doctor  
Major: Law/Public Interest  
Major: Law/Public Policy

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2020							
LAWJ	001	31	Legal Process and Society	4.00	B+	13.32	
Nan Hunter							
LAWJ	002	32	Bargain, Exchange & Liability	6.00	B	18.00	
Gary Peller							
LAWJ	005	31	Legal Practice: Writing and Analysis	2.00	IP	0.00	
Michael Cedrone							
LAWJ	009	31	Legal Justice Seminar	3.00	B+	9.99	
Kevin Tobia							
EHrs QHrs QPts GPA							
Current				13.00 13.00 41.31 3.18			
Cumulative				13.00 13.00 41.31 3.18			
Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2021							
LAWJ	003	93	Democracy and Coercion	5.00	B+	16.65	
Allegra McLeod							
LAWJ	005	31	Legal Practice: Writing and Analysis	4.00	B+	13.32	
Michael Cedrone							
LAWJ	007	31	Property in Time	4.00	B	12.00	
Sherally Munshi							
LAWJ	008	31	Government Processes	4.00	B	12.00	
Howard Shelanski							
EHrs QHrs QPts GPA							
Current				17.00 17.00 53.97 3.17			
Annual				30.00 30.00 95.28 3.18			
Cumulative				30.00 30.00 95.28 3.18			
Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2021							
LAWJ	1631	05	Federal Practice	2.00	B+	6.66	
Seminar: Contemporary Issues							
Irving Gornstein							
LAWJ	408	06	Poverty Law and Policy Practicum		NG		
Peter Edelman							
LAWJ	408	81	~Seminar	2.00	IP	0.00	
LAWJ	408	85	~Fieldwork	6.00	IP	0.00	
EHrs QHrs QPts GPA							
Current				2.00 2.00 6.66 3.33			
Cumulative				32.00 32.00 101.94 3.19			

-----Continued on Next Column-----

Subj	Crs	Sec	Title		Crd	Grd	Pts	R
----- Spring 2022 -----								
LAWJ	1482	09	Negotiations and Mediation Seminar		3.00	A	12.00	
Eric Berger								
LAWJ	408	06	Poverty Law and Policy Practicum			NG		
Peter Edelman								
LAWJ	408	81	Poverty Law and Policy Practicum		4.00	A	16.00	
LAWJ	408	85	~Fieldwork		6.00	P	0.00	
LAWJ	530	05	Federal Legislation Clinic			NG		
David Rapallo								
LAWJ	530	81	~Legislative Lawyering and Client Representation		4.00	B+	13.32	
David Rapallo								
LAWJ	530	82	~Educational Development		4.00	A-	14.68	
David Rapallo								
LAWJ	530	83	~Professional Development		2.00	A-	7.34	
David Rapallo								
			EHrs	QHrs	QPts	GPA		
Current			23.00	17.00	63.34	3.73		
Annual			25.00	19.00	70.00	3.68		
Cumulative			55.00	49.00	165.28	3.37		
Subj	Crs	Sec	Title		Crd	Grd	Pts	R
----- Summer 2022 -----								
LAWJ	361	06	Professional Responsibility		2.00	A-	7.34	
EHrs QHrs QPts GPA								
Current			2.00	2.00	7.34	3.67		
Cumulative			57.00	51.00	172.62	3.38		
Subj	Crs	Sec	Title		Crd	Grd	Pts	R
----- Fall 2022 -----								
In Progress:								
LAWJ	165	02	Evidence		4.00	In Progress		
LAWJ	178	07	Federal Courts and the Federal System		3.00	In Progress		
LAWJ	215	08	Constitutional Law II: Individual Rights and Liberties		4.00	In Progress		
LAWJ	397	05	Separation of Powers Seminar		3.00	In Progress		
----- Transcript Totals -----								
			EHrs	QHrs	QPts	GPA		
Current			2.00	2.00	7.34	3.67		
Annual			57.00	51.00	172.62	3.38		
Cumulative			57.00	51.00	172.62	3.38		
----- End of Juris Doctor Record -----								

**Georgetown Law  
Supreme Court Institute**  
600 New Jersey Avenue, NW  
Washington, DC 20001

February 03, 2023

The Honorable Irma Ramirez  
Earle Cabell Federal Building and  
United States Courthouse  
1100 Commerce Street, Room 1567  
Dallas, TX 75242

Dear Judge Ramirez:

I am a Professor at Georgetown Law and the Executive Director of the Supreme Court Institute. Abrar Omiesh was a student in my Federal Practice Seminar that I co-teach with Judge Pillard of the D.C. Circuit. Based on my experience with Abrar, I recommend her for a clerkship.

Abrar came to our class with far less background in both the subject matter and the method for analyzing legal problems than her fellow classmates. Her early participation reflected those deficits. But as time went on, she understood more what we were looking for, and she blossomed into one of our favorite participants.

Abrar's has four attributes that stand out and, in combination, made her contributions to the class unique. First, everything she says comes from a commitment to and a passion for social justice. Second, Abrar's comments are framed in terms of the large issues raised by a case. Third, Abrar is unpredictable in terms of how she will come down on an issue. She does not hew to the conventional-she thinks independently about all issues. Fourth, she is fearless and willing to take chances on what she has to say.

All of that was also in evidence in the paper she submitted on *Bivens*. The *Bivens* decision authorized suits against federal officials for violations of constitutional rights. The history of *Bivens* is that it is now a disfavored doctrine. In each succeeding case since the first three, the Court has cut back further and further on its scope. Rather than attempt to carve out and justify some space for *Bivens* that fits in with existing doctrine, Abrar's paper was a frontal assault on the Court's failure to live up to the early promise of *Bivens*.

From our perspective, it would have been more practical and more persuasive to try to carve out a continuing space for *Bivens*, and perhaps suggest some kind of legislative response. The approach Abrar took was, from our perspective, too ambitious for someone who is a second-year law student. But that did not stop Abrar. She is just that committed to her ideals.

Sincerely,

Irv Gornstein  
Executive Director

Irv Gornstein - ilg@law.georgetown.edu



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1100 Commerce Street, Room 1567  
Dallas, TX 75242

Dear Judge Ramirez:

I am most glad to support the application of Abrar Omeish for a judicial clerk. Ms. Omeish was a student in my class about poverty law and policy. I know her well because it is year-long and had only 14 students. I know her writing, speaking in class, and was also my assistant. Everything was excellent.

Abrar is a remarkable person. She is really two people with her work. Of course, our evening students have day jobs, but Abrar is special within that. She is a Fairfax School Board member in Virginia, and she was elected with 160,000 votes. She is the youngest ever. The county has 1.3 million peoples and has a budget of \$3 million. If you follow the county's work, especially now, the work is difficult. That said, Abrar has does all of her law school work very well, as I said, including the work she did for me. She is quite special.

I can tell you that Abrar would be a great work for a judge. I strongly choose her for you.

Peter Edelman  
Carmack Waterhouse Professor of Law  
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June 14, 2022

To Whom It May Concern:

I am delighted to recommend Abrar Omeish for a clerkship in your chambers.

Abrar was a student in my Negotiations and Mediation Seminar at Georgetown Law during the Spring 2022 semester. Over the course of six intensive days of study and practice, Abrar distinguished herself as an extraordinarily bright, insightful, curious and well-rounded individual, who brings not only superior intellectual horsepower to her analyses but also the ability to process and apply her learnings in practice. In a seminar of 24 students, Abrar was the standout. She set herself apart through both the leading role she played in classroom discussions and the quality of her written submissions.

Abrar's aptitude for navigating between theory and practice was especially evident in her written work. As part of the course, students are required to write journals where they reflect on what they are learning through readings and classroom discussions and apply it to their own negotiation and conflict resolutions challenges. Abrar's journals were the best in the class, owing in large part to her ability to connect the theories covered in the literature to her professional pursuits. This is the sort of skill that leads me to believe that Abrar would be especially well-suited to a clerkship, where she will have the opportunity to take lessons from her legal education and apply them to her professional practice, often in her written work.

Her ability to thread the needle between theory and practice was exemplified in her final paper, which brilliantly connected the academic research on negotiation to her personal experiences in navigating fraught scenarios in the legal and political spheres. It was one of the most gripping and compelling papers I have graded in my 16 years teaching this course.

In summary, based on Abrar's performance in my course, I can enthusiastically recommend her for a clerkship in your chambers. I am not only confident that she would be a diligent and thoughtful clerk; I also believe that she would take lessons from the experience that would be highly valuable to her continued growth as a legal professional and an active contributor to public discourse about the most important issues facing our nation today.

Yours sincerely,

Eric Berger  
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The Honorable Irma Ramirez  
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United States Courthouse  
1100 Commerce Street, Room 1567  
Dallas, TX 75242

Dear Judge Ramirez:

I am writing with the greatest enthusiasm to recommend Abrar Omeish, a current Georgetown Law student, for a clerkship in your chambers.

Abrar is not a typical candidate. Her grades, although on an upward trend, are below what I am sure you are looking for. But I am writing because I have been very impressed with her. She is smart, hard-working, thoughtful, and committed to public service, she has a stunning record of achievement, and she has excellent judgment. She is well worth careful consideration and would be a great addition to any chambers.

Abrar is a Yale College graduate whose undergraduate record and public service commitment led to her receiving one of our Blume public interest fellowships. This is a newly created program at Georgetown Law that provides full tuition scholarships for a handful of people we think will make great contributions to the public good as lawyers. It is our analogue to NYU's Root Tilden. The selection process is intensely competitive involving interviews and review of the candidate's record. Abrar was one of only six recipients her year.

Her record of achievement is substantial and long-standing. She is the co-founder of a program that, over the past decade, has given free tutoring and mentoring to thousands of underprivileged children. While in Law School, she has served as an elected member of the Fairfax County Board of Education, helping supervise a multibillion dollar budget and navigate the school system through the pandemic. She received over 160,000 votes and is a trailblazer in her role - the first Libyan elected official in the country, the youngest person ever to hold her position. She also served as Virginia Co-Chair for Bernie Sanders. I really don't know how she does it all.

She clearly is someone who gets things done, a key for success as a clerk, and she has a record of working well with others, another crucial element of clerking.

I leave to others commenting on her academic record at Georgetown, since she has not been a student of mine. What I would like to highlight is her thoughtfulness, understanding of different perspectives, and judgment.

I met her when she first came to Georgetown. Even among the Blume Scholars, a remarkable group, she stood out. Not only does she have a great record of public service, she is thoughtful, outgoing, and articulate.

We have had numerous discussions over the past few years, both about her career goals and the school. She has been particularly helpful to me in discussing how to make the law center a welcoming place for Muslim law students. She has reached out to me about this topic, and, at a time in which in our community and so many others, people have difficulty having open conversations with those of different perspectives, Abrar is a model for her openness to other viewpoints and ability to problem solve. Again, I think this would be invaluable in a clerk, enabling her to work through hard issues and grapple with different perspectives.

I have been most impressed with Abrar. I am confident that she would be an excellent clerk, and I hope you will give her application the most serious consideration.

Sincerely,

William M. Treanor  
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Please find my writing sample below.

This is a memo I prepared for Judge Ortiz of the Virginia Court of Appeals in advance of his panel hearing in a recent case. It summarizes the case, relevant law, presents a decision recommendation, and provides questions the judge may consider asking during the panel. The case has already been heard.

**COURT OF APPEALS OF VIRGINIA**  
**BENCH MEMORANDUM**

**To:** Judge Ortiz  
**Prepared by:** Abrar Omeish  
**Panel Date and Location:** July 26, 2022, Virginia Beach  
**Judge Assigned:** Judge Ortiz  
**Case Style:** *Commonwealth of VA vs. Murrell, Jarvis Cornelius*

**Record No.:** 1181-21-1  
**Appealed From:** Chesapeake Circuit  
**Judge:** Hon. Rufus A. Banks, Jr.  
**Counsel for Appellant:** Heather Buyrn Crook, Esq. (Buyrn & Crook, Attorneys)  
**Counsel for Appellee:** Jason S. Miyares (Attorney General)  
 Tanner M. Russo (Assistant Attorney General)

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Jarvis Cornelius Murrell (“Murrell”) appeals four convictions by the Circuit Court of the City of Chesapeake (“circuit court”). He argues that the circuit court erred in convicting him because it failed to prove necessary elements in all four charges beyond a reasonable doubt.

The charges and claims are as follows:

- I. DUI With Prior Related Felony DUI under Virginia Codes 18.2-266 and 18.2-270(c)(2), for which they claim Commonwealth fails to prove DUI.
- II. Refuse Breath Subsequent Within 10 Years under Virginia Code 18.2-268.3, for which they claim Commonwealth fails to prove unreasonable refusal.
- III. PWID under Virginia Code 18.2-248, for which they claim Commonwealth fails to prove possession, knowledge, and intent to distribute cocaine.
- IV. Drive While DUI Revoked under Virginia Code 46.2-391(d)(2), for which they claim Commonwealth fails to prove DUI.

Because Murrell argues Commonwealth failed to prove the elements of his convictions, he asks this Court to reverse the circuit court’s decisions. However, because

Murrell did not provide evidence to overcome the standard of review required on appeal, I recommend this court **AFFIRM**.

## **I. BACKGROUND**

On September 20, 2022 at 4:45am, McDonald’s employee Joseph Keenan (“Keenan”) arrived at work and noticed a car “in the middle of the parking lot” (R. 174). After several customers brought this to his attention, Keenan walked outside around 6:20am and noticed that the man, Jarvis Cornelius Murrell (“Murrell”), was not awake (R. 173). Keenan “had to bang on the roof of the car” to wake the man up and asked him to pull into the lot, upon which the man did (R. 175). Keenan did not smell nor see any alcohol in his vehicle (R. 174). After about ten minutes, Keenan noticed the man’s car “on top of the curb... hitting the sign and everything else” and called the police (R. 176).

Chesapeake Police Officer Shannon Velez (“Velez”) arrived in the parking lot at 6:42am and noticed a car with a side front tire on the curb and open side door, still on drive (R. 178-90, 194). Velez woke Murrell up and asked him to step out, upon which he slurred speech and she noticed a strong odor of alcohol and “bloodshot” eyes (R. 180). She asked about Murrell’s consumption, and he stated that he did not have any alcohol since one shot at 1:00am (R.181). He explained that the car was a rental and that he had been driving back from Portsmouth, where his girlfriend was delivering their baby. (R. 182).

Outside of the car, Murrell appeared to “be swaying” (R. 181). Velez did not notice any contraband or evidence of alcohol ingestion at the scene (R. 193), but she conducted the one-legged-stand, the walk-and-turn, and the HGN field sobriety tests (“FSTs”). During the HGN test, she claims to have noticed involuntary eye bounces consistent with intoxication. (R. 182-

84). According to Velez, Murrell “stated that he was done with the FSTs at that point” and that he rejected a breath test he was offered (R. 184).

Murrell claims that he explained how his health complications prohibit him from effectively engaging in the FSTs (R. 256), stating after he stumbled that “I’m having a hard time myself” (R. 183). The officer was aware of this (R. 181). Murrell had shared with her that he had a concussion four months prior, as well as asthma and bronchitis which he took albuterol for at 7:00am that morning (R. 181-82). Officers did not conduct an ABC test, nor a counting backwards test as alternatives (R. 257).

Velez arrested Murrell for DUI suspicion (R. 184). Velez later claimed during trial that she had also looked up Murrell in their system and found a previous license revocation for a third offense DUI conviction on June 12, 2019, as well as a refusal charge on February 4, 2019 (R. 186). During her search, Velez found no drugs, alcohol, or paraphernalia (R. 256), though she did find \$366 in various folded denominations in Murrell’s pocket (R. 190). Copies of the prior convictions were entered as evidence without objection during trial (R. 186).

Officers Fellows (“Fellows”) and Posada (“Posada”) arrived to the scene as back up during the time when Velez was conducting field tests (R. 189, 208). Upon his arrival, Fellows looked inside the open vehicle and “observed a small plastic baggie containing a powdery substance, suspected narcotics,” near the driver seat door (R. 209). He motioned to Posada to join him (R. 209), and both searched the car.

Fellows and Posada did not find anything in the trunk, nor did they find alcohol or any paraphernalia in the car (R. 212-16). Officers did find several additional plastic baggies in the center console near the armrest, 20 of which were empty and three of which had a white powdery substance in them (R.237-38). They also found two credit cards with Murrell’s name

on them and two digital scales—one in the console and another on the passenger seat with white residue on it (R. 225-27, 348-50, 236, 238).

When identifying the baggies to Murrell, Murrell indicated that the officers “must have planted them” in the car (R. 193-94). The driver-side bag Fellows originally identified turned out to be cellophane wrap of “four tied up packaged corner baggies” of a white substance (R. 226-27, 351). The white substance of the baggies in the console and on the driver-side were later tested and found to contain cocaine (R. 351).

Velez transported Murrell to the jail, where Murrell refused to take a breath test twice and signed an acknowledgement of refusal form after it was read to him (R. 187). He was then charged with Refuse Breath Subsequent Within 10 Years, in addition to the DUI With Prior Related Felony DUI, Drive While DUI Revoked, and PWID.

During trial, Detective Terra Cooley (“Cooley”) of the Chesapeake Police Department offered expert testimony on the packaging and distribution of narcotics (R. 241). She testified from her experience that the amount found in the vehicle is consistent with amounts that are “more than likely” being sold (R. 245). While personal use involves consuming half a gram per day on average, reaching about a gram-and-a-half for heavy users according to her testimony, Murrell was found with 11 grams (R. 243-44). According to her, cocaine users generally buy their dose every day, purchasing about three-and-a-half grams “at most” for use “over a couple days” (R. 244).

Cooley also noted that the cash obtained from Murrell in “lots of denominations” is consistent with the behavior of drug distributors, especially in the most common twenty-dollar bill denominations found with Murrell (R. 190, 246). She expressed that these patterns, as well as the use of a rental car, are “very significant” (R. 246).



## II. ASSIGNMENTS OF ERROR

Murrell makes four assignments of error, each for failure to prove the elements of his four charges, as outlined:

1. The trial court erred in convicting the Appellant for DUI With Prior Related Felony DUI under Virginia Codes 18.2-266 and 18.2-270(c)(2) because the Commonwealth failed to prove the elements of DUI. Specifically, it failed to prove that the Appellant, beyond a reasonable doubt, was driving under the influence of an intoxicant which impaired his ability to drive.
2. The trial court erred in convicting the Appellant for Refuse Breath Subsequent Within 10 Years under Virginia Code 18.2-268.3 because the Commonwealth failed to prove the elements. Specifically, it failed to prove that the Appellant unreasonably refused, beyond a reasonable doubt.
3. The trial court erred in convicting the Appellant for PWID under Virginia Code 18.2-248 because the Commonwealth failed to prove the elements. Specifically, it failed to prove possession, knowledge, and intent to distribute cocaine, beyond a reasonable doubt.
4. The trial court erred in convicting the Appellant for Drive While DUI Revoked under Virginia Code 46.2-391(d)(2) because the Commonwealth failed to prove the elements. Specifically, it failed to prove the elements of DUI, beyond a reasonable doubt.

## III. ANALYSIS

### 1. Standard of Review

The four claims presented in this case challenge the sufficiency of the evidence. When reviewing such claims, the appellate court must “consider the evidence and all reasonable

inferences fairly deducible therefrom in the light most favorable to the Commonwealth,” *Perry v. Commonwealth*, 280 Va. 572, 578 (2010) (quoting *Bass v. Commonwealth*, 259 Va. 470, 475 (2000)), the prevailing party in this case. While the appellate court is “obligated to set aside the trial court’s judgment when it is contrary to the law and the evidence,” *Tarpley v. Commonwealth*, 261 Va. 251, 256 (2001), the court must determine whether this evidence is such that “any ‘rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Young v. Commonwealth*, 275 Va. 587, 591 (2008).

The reasonableness of a defendant’s hypothesis is a question of fact. *Wood v. Commonwealth*, 57 Va. App. 286, 306 (2010). Evidence is not limited to that mentioned by parties on the record, *Bolden v. Commonwealth*, 275 Va. 144, 147 (2008), and we give “the benefit of all inferences fairly deducible from the evidence.” *Id.* at 148. Unless the judgment is “plainly wrong or without evidence to support it,” the appellate court affirms. *Bolden*, 275 Va. at 148.

**2. The Circuit Court Did Not Err in Convicting Murrell of DUI With Prior Related Felony DUI (I) and Drive While DUI Revoked (IV) When There Was Sufficient Evidence to Meet the DUI Element.**

Murrell argues that the DUI With Prior Related Felony DUI and Drive While DUI Revoked charges are in error because the DUI element of each charge has not been proven “beyond a reasonable doubt.” He argues that no admission established the recent imbibing of alcohol, and that only around 1:00am did he consume “one shot” (Appellant Br. 10). He states that “there was only circumstantial evidence” that he was inebriated while driving (Appellant Br. 10-11).

However, Murrell fails to recognize that the Commonwealth “is not required to disprove every remote possibility of innocence,” *Cantrell v. Commonwealth*, 7 Va. App. 269,

289 (1998). Instead, the Commonwealth is “required only to establish guilt of the accused to the exclusion of a reasonable doubt.” *Id.*

Driving under the influence is outlined in the referenced Virginia Code as operating a motor vehicle while under the influence of alcohol or any drug/intoxicant “of whatsoever nature” such that the ability to drive or operate any motor vehicle is impaired. Code § 18.2-266. This could be due to the combination of alcohol and a drug as well. *Id.* This standard does not require blood alcohol levels and can be proven through exhibited symptoms like “manner, disposition, speech, muscular movement, general appearance or behavior” *Thurston v. Lynchburg*, 15 Va. App. 475, 483 (1992).

Commonwealth presented eyewitness testimony through Keenan that Murrell was nonresponsive to such a degree that Keenan “had to bang on the roof of the car” to wake Murrell up when his car was parked in the middle of the parking lot (R. 173). This fact alone is sufficient to infer that the driver is intoxicated. *Propst v. Commonwealth*, 24 Va. App. 791, 795 (1997). This was the case even after a second attempt to correct him, at which point Keenan testified that Murrell’s car was “on top of the curb... hitting the sign and everything else” (R. 176). Importantly, Keenan also testified that Murrell did move his car while he was “knocked out” (R. 168), having “[gone] forward through the intersection... he turned and pulled into the parking lot” after reversing for a bit first (R. 175). Murrell was unable to operate his vehicle when he was found, and he was still unable to after twice being corrected.

This testimony is consistent with the that of Velez, who observed that the car “was still in drive” when arriving at the scene (R. 179). Velez indicated that at this time Murrell had bloodshot eyes, slurred speech, and a “strong odor of alcoholic beverage” (R. 180). Commonwealth also demonstrated through the HGN test that Murrell exhibited involuntary eye

bounces typical of intoxication (R. 182-84) at the time of his stop. When Posada asked him if he had been drinking, he replied “not for real” (R. 234).

Additionally, whether or not Murrell was driving under the influence is a factual matter. The appellate court is required to rule according “the benefit of all inferences fairly deducible from the evidence,” *Bolden*, 275 Va. at 148, “in the light most favorable to the Commonwealth.” *Perry*, 280 Va. at 578.

When viewed in the light most favorable to Commonwealth, the record supports the circuit court’s finding “beyond a reasonable doubt” that Murrell was driving under an influence in the moments leading up to police arrival, if not before. Meeting the DUI element in this way means the circuit court did not err in either conviction. The evidence Commonwealth presented indicates that the circuit court judgment is not “without evidence to support it,” and the appellate court is compelled to affirm the prior court’s decision in such cases. *Bolden*, 275 Va. at 148.

### **3. The Circuit Court Did Not Err in Convicting Murrell of Refuse Breath**

#### **Subsequent Within 10 Years (II) when There Was Sufficient Evidence to Meet the Unreasonable Refusal Element.**

Murrell here argues that the Refuse Breath Subsequent Within 10 Years charge is in error because the Unreasonable Refusal element of each charge has not been proven “beyond a reasonable doubt.” He contends that he told officers about his physical and medical issues that interfered with his ability to perform the physical tests (Appellant Br. 8), citing a recent concussion, asthma, and medication he took that morning for bronchitis that resulted in balance issues prohibitive to the balance required to successfully pass the field sobriety tests (R. 267).

The law requires any driver who operates a motor vehicle to consent to blood or breath samples to determine intoxication status when arrested for a DUI violation, as Murrell was in

this case. Va. Code § 18.2-268.2(A). “The circumstances in which one may reasonably refuse the test and abrogate the consent implied by law are narrow,” *Brothers v. Commonwealth*, 50 Va. App. 468, 475 (2007), and “there must be some reasonable factual basis for the refusal,” like health endangerment. *Cash v. Commonwealth*, 251 Va. 46, 50 (1996).

Murrell refused breath testing at the scene and twice again at the station after Velez read an acknowledgement of refusal form to him that he signed (R. 187). He informed the police that he was unable to balance for the sobriety tests because of a recent concussion and medication related to his bronchitis (R. 181-82). When Velez asked whether he was diagnosed with or taking any medications for the concussion he claimed, Murrell said he was not (R. 181). Additionally, throughout trial, Murrell presented no evidence to substantiate claims about his conditions (R. 262), omitting the required “factual basis for the refusal.” *Cash*, 251 Va. at 50. More importantly, Murrell does not cite health as a prohibitive reason in the analysis of his brief for this appeal (Appellant Br. 9).

Finally, whether or not behavior is reasonable is a question of fact. *Archer v. Commonwealth*, 26 Va. App. 1, 12-13 (1997). While reasonableness of concerns around health and the ability to balance can be discussed, the appellate court here can only set aside the trial court’s judgement when it is “contrary to the law and the evidence.” *Tarpley*, 261 Va. at 256. The appellate court is required to rule according “the benefit of all inferences fairly deducible from the evidence,” *Bolden*, 275 Va. at 148, “in the light most favorable to the Commonwealth.” *Perry*, 280 Va. at 578. Here, the absence of “contrary evidence” to indicate a factually-based health condition for Murrell gives the appellate court no grounds upon which to reverse the factual finding of unreasonable refusal.

**4. The Circuit Court Did Not Err in Convicting Murrell of PWID (III) when There Was Sufficient Evidence to Meet the Possession, Knowledge, and Intent to Distribute Cocaine Element.**

Murrell argues that the PWID charge is in error because the Possession, Knowledge, and Intent to Distribute Cocaine element has not been proven “beyond a reasonable doubt.” He argues that “he made no admissions regarding the Cocaine” (Appellant Br. 11), and that the Commonwealth could not establish that the cocaine was in fact his own, nor that he had an intent to distribute, with anything but circumstantial evidence.

Possession of a controlled substance with intent to distribute means the person “‘intentionally and consciously possessed’ the drug, either actually or constructively, with knowledge of its nature and character, together with the intent to distribute it.” *Jones v. Commonwealth*, 23 Va. App. 93, 100-01 (1996). Proof of possession can be constructive, which means “evidence of acts, statements, or conduct... or other facts or circumstances which tend to show the defendant was aware of both the presence and character of the substance and that it was subject to his dominion and control” *Drew v. Commonwealth*, 230 Va. 471, 473 (1986).

Murrell was “knocked out” (R. 168) and unable to move his car properly after several nudges before police found him in the parking lot with his car on drive and “on top of the curb... hitting the sign and everything else” (R. 176-90). Velez noticed eye movements in him consistent with being under the influence (R. 182-84), and she found a previous license revocation for a third offense DUI conviction as well as a refusal charge just the past year (R. 186). Additionally, Fellows found a cocaine baggie in the driver-side seat of the vehicle Murrell was driving (R. 226-27) such that it was visible to him from outside of the car (R. 209). While it is true that presence of a substance does not immediately nor necessarily imply

possession, *Burchette v. Commonwealth*, 15 Va. App. 432, 435, (1992), it is reasonable to infer from this evidence that, Murrell, having rented and been driving the vehicle, would have noticed it given the offer was able to from a distance. Officers also found credit cards with Murrell's name on them in the vehicle console with the rest of the cocaine baggies, as well as a scale with white residue from the baggies on it on the passenger-side seat of a vehicle only Murrell had been found in for hours. It is reasonable to infer that Murrell would have been aware that two credit cards, in his name, were placed in a closed compartment with these baggies.

Additionally, intent to distribute “must be shown by circumstantial evidence” that corresponds to the conviction. *Wilkins v. Commonwealth*, 18 Va. App. 293, 298-99 (1994). “Circumstantial evidence is as competent and is entitled to as much weight as direct evidence, provided it is sufficiently convincing to exclude every reasonable hypothesis” *Breeden v. Commonwealth*, 43 Va. App. 169, 177 (2004). The Commonwealth “is not required to disprove every remote possibility of innocence,” *Cantrell v. Commonwealth*, 7 Va. App. 269, 289 (1998), and it is explicitly “not required to prove that there is no possibility that someone else may have planted, discarded, abandoned, or placed” contraband where it is found. *Brown v. Commonwealth*, 15 Va. App. 1, 10 (1992).

During trial, the Commonwealth presented Detective Cooley, expert witness on narcotics packaging and distribution, who testified that the amounts found are “more than likely” being sold (R. 245). She stated that the patterns and behaviors Murrell had were “very significant” indicators of drug distribution, including the cocaine quantities, two scales, usage of a rental car, multiple credit cards, and bill denominations in particular bundles. (R. 246). At the same time, Murrell did not present explanation, response, nor evidence regarding any of

these indicators other than Murrell's statement to the police at the time that the bags must have been planted (R. 193-94).

Murrell explains that the "appellate court has the duty to examine the evidence" and to uphold unless a conviction is "plainly wrong or without evidence to support it," *Tarpley*, 261 Va. at 256 (2001), yet Murrell presents no evidence to the contrary nor provides counter narratives to those of the Commonwealth. The appellate court is required to rule according "the benefit of all inferences fairly deducible from the evidence," *Bolden*, 275 Va. at 148, "in the light most favorable to the Commonwealth." *Perry*, 280 Va. at 578. Given an absence of evidence from Murrell and an alternative explanation from the Commonwealth, the appellate court is compelled to affirm.

#### IV. CONCLUSION

For the reasons stated above, I recommend this Court **AFFIRM**.

#### QUESTIONS

##### APPELLANT

- How is Murrell's refusal to participate in the breath tests, as an alternative after saying the field tests were impaired by his health condition, not unreasonable refusal?
  - Why did counsel mention but not argue the health conditions as grounds for why Murrell refused the breath test?
  - Why was evidence not provided of Murrell's health conditions as corroboration of his inability to pass the balancing tests? What evidence is available to substantiate these conditions or reasons?
- According to case law, "whether or not behavior is reasonable is a question of fact." *Archer v. Commonwealth*, 26 Va. App. 1, 12-13 (1997). Are you arguing with the understanding that this is the case? If not, how do you reconcile this idea?
- By asking this appellate court to reconsider the three elements you contest, you are required to assert per *Bolden*, 275 Va. at 148 that the error was to such an extent that it was "plainly wrong or without evidence to support it." What new evidence do you provide for any one of these three claims that could possibly meet this threshold for our standard of review?



- How do you suggest the court overcome the threshold of evaluating the factual evidence in the light favorable to the Commonwealth, when you present no new evidence in this case?

#### APPELLEE

- What evidence does the Commonwealth rely on to surpass the “beyond a reasonable doubt” standard that Murrell did in fact drive under the influence when officers arrived on the scene after he was in a parking lot?
- What evidence does the Commonwealth rely on to surpass the “beyond a reasonable doubt” standard that Murrell did in fact unreasonably refuse a breath test, given the health conditions he articulated? Why did the officers not conduct an ABC or other verbal sobriety test?
- At what point did Officer Velez actually identify Murrell’s record, and was this information available prior to arrest? If not, what evidence does the Commonwealth consider the most persuasive in establishing a justification for arrest?
- In *Cameron v. Commonwealth* 211 Va. 108, the court finds that a suspicion that the defendant is guilty cannot be sufficient evidence for their guilt. What evidence beyond suspicion do you have, other than Detective Cooley’s testimony, that Murrell did in fact meet the threshold for each component of PWID? What is your response to the Appellant’s concern that no other evidence (cell phones, large sums of money, cutting agents, firearms, etc.) was available, including alcohol or contraband, in the vehicle?

**Applicant Details**

First Name **Joshua**  
 Last Name **Pruett**  
 Citizenship Status **U. S. Citizen**  
 Email Address [jmpruett@gmail.com](mailto:jmpruett@gmail.com)  
 Address

**Address****Street****13565 Honey Dr.****City****Baton Rouge****State/Territory****Louisiana****Zip****70810****Country****United States**

Contact Phone Number **225-747-0462**

**Applicant Education**

BA/BS From **Brigham Young University**  
 Date of BA/BS **April 2008**  
 JD/LLB From **Louisiana State University, Paul M. Hebert Law Center**  
<http://www.law.lsu.edu>  
 Date of JD/LLB **May 26, 2023**  
 Class Rank **10%**  
 Law Review/Journal **Yes**  
 Journal(s) **Journal of Energy Law and Resources**  
 Moot Court Experience **No**

**Bar Admission****Prior Judicial Experience**

Judicial Internships/  
 Externships **No**

Post-graduate Judicial  
Law Clerk                      **No**

### **Specialized Work Experience**

### **Recommenders**

Smith, Norman  
nsmith3@lsu.edu  
225-578-8701

Richards, Edward  
richards@lsu.edu

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

13565 Honey Drive  
Baton Rouge, Louisiana 70810

February 19, 2023

Magistrate Judge Irma C. Ramirez  
1100 Commerce Street, Room 1567  
Dallas, Texas 75242-1003

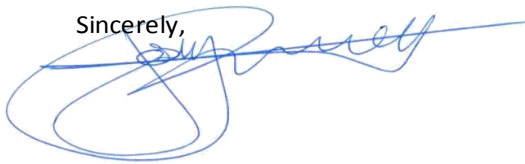
Dear Judge Ramirez:

I am a third-year law student at Louisiana State University's Paul M. Hebert Law Center, on track to graduate in May 2023, and I am ranked 16/176 in my class. I served as a judicial extern for Chief District Judge Shelly Dick of the United States District Court, Middle District of Louisiana from August to November of 2022. I am interested in a judicial clerkship with your chambers beginning in the fall of 2023. I am a Production Editor on LSU's *Journal of Energy Law and Resources* (JELR) and am participating in LSU's Civil Mediation Clinic this semester. My legal work history has exposed me to a range of regulatory, transactional, litigation, and alternative dispute resolution projects, each with something new to learn.

I spent ten years as a Geotechnical Engineer supporting government, commercial, and industrial projects ranging from coastal restoration and levee modifications to commercial buildings to tank foundations for plant expansions. Eventually, I felt the need for a change, and a stroke of inspiration prompted me to pursue a career in law. Early in my time at law school, I became interested in the judiciary and in the judge's role in applying the law to the facts of a given case to arrive at a just conclusion. I would like to use my time as your clerk expanding my legal research and writing skills, developing my legal judgment, improving my ability to present legal arguments, and helping resolve real-world conflicts.

I have attached a copy of my resume, my law school transcripts, and a writing sample, consisting of a research memo I wrote to support a legislative proposal for updates to Louisiana arbitration law, to this letter. Thank you for your time and consideration. If you wish to interview me, you may contact me at (225) 747-0462. It would be a great honor to work for you and I look forward to the opportunity to do so.

Sincerely,



Joshua Pruett

Enclosures

## Joshua M. Pruett

13565 Honey Drive ▪ Baton Rouge, Louisiana 70810 ▪ (225) 747-0462 ▪ jpruet7@lsu.edu

### **EDUCATION**

**J.D./D.C.L. Candidate**, Paul M. Hebert Law Center, Louisiana State University, Baton Rouge, Louisiana

*Expected Graduation in May 2023*

GPA: 3.56, Rank: 16/176 (through Fall 2022)

Production Editor (Vol. XI), *Journal of Energy Law and Resources*

Dean's List

**M.S., Civil Engineering, Geotechnical Emphasis**, Brigham Young University, Provo, Utah

*December 2009, GPA: 3.89*

**B.S., Civil and Environmental Engineering**, Minor: French, Brigham Young University, Provo, Utah

*April 2008, GPA: 3.77*

### **EXPERIENCE**

**United States District Court for the Middle District of Louisiana**, Baton Rouge, Louisiana

*Legal Extern, Chief Judge Shelly Dick, August 2022 – November 2022*

Observed court proceedings, including hearings, criminal re-arraignments and sentencings, civil jury trials, and a settlement conference. Drafted research memoranda, including recommendations, for motions submitted to the court by civil litigants. Reviewed citations in draft rulings for completion and accuracy.

**Kean Miller, LLP**, Baton Rouge, Louisiana

*Summer Law Clerk, June 2022 – August 2022*

Drafted legal research memoranda in response to attorney questions about commercial debt collection, attorney ethics, legacy environmental issues, intellectual property, litigation practice, arbitration rules, and other issues. Supported company blog posts and legislative proposals.

**The Baringer Law Firm, LLC**, Baton Rouge, Louisiana

*Part-time Law Clerk, August 2021 – June 2022*

Drafted legal research memoranda in response to attorney questions about wills and successions, employment litigation, fair housing questions, etc. Drafted court documents for attorney review.

**Van Ness Feldman LLP**, Washington, D.C. (via Baton Rouge, LA)

*Remote Summer Associate/LSU Fellow, June 2021 – August 2021*

Drafted e-mail summaries and legal research memoranda in response to attorney questions about land use for renewal energy and ports, pipeline safety, real estate transactions, etc.

**GeoEngineers, Inc.**, Baton Rouge, Louisiana

*Geotechnical Engineer, April 2010 – August 2020*

*Louisiana P.E. in Civil Engineering, Lic. No. 38166 (2013 – 2021)*

Supervised laboratory and field management teams. Participated in hiring decisions and conflict resolution. Educated clients, engineers, and the public on geotechnical principles and overcoming project challenges. Discussed project needs and challenges with clients. Completed complex geotechnical calculations for coastal restoration concepts. Provided foundation recommendations for industrial facilities, commercial buildings, and embankments. Provided engineering support for pipeline installation and other projects near levees. Supported clients at meetings with regulatory agencies. Trained junior engineers in engineering processes and software. Managed engineering project budgets, schedules, and tasks. Reviewed data, analyses, and text for report quality.

**Brigham Young University**, Provo, Utah

*Research and Teaching Assistant, January 2008 – December 2009*

### **SKILLS**

- French Language Proficient, speaking (conversational), reading and writing
- Proficient in Microsoft Office products, including Excel, Word, and PowerPoint

### **ACHIEVEMENTS/INTERESTS**

- French-speaking mission to Montreal, Canada for the Church of Jesus Christ of Latter Day Saints, 2002-2004
- Eagle Scout, 2001
- Cooking, Baking, Singing, Playing music, Drawing, Gardening, Learning, Helping, Teaching



LOUISIANA STATE UNIVERSITY AND A & M COLLEGE  
BATON ROUGE, LOUISIANA 70803



OFFICIAL TRANSCRIPT

JOSHUA MICHAEL PRUETT  
xxx-xx-5730

BIRTHDATE: 02/11

DEGREES AWARDED:

04/2008 BS  
BRIGHAM YOUNG UNIVERSITY  
12/2009 MS  
BRIGHAM YOUNG UNIVERSITY

CRSE	COURSE TITLE	SEC	GR	HRC	HRE	QPTS	PROF	CRS	RNK
LOUISIANA STATE UNIVERSITY FALL SEM 2020 L 1 JDCL									
5000	LEGAL METHODS	2	P		1.0		GORING, DARLENE		
5001	CONTRACTS	4	3.3	3.0	3.0	9.9	BOCKRATH, JOSEPH	8/	34 T
5003	TORTS	1	3.0	3.0	3.0	9.0	CHURCH, JOHN	33/	68 T
5007	BASIC CIVIL PROC I	4	3.9	2.0	2.0	7.8	LAMONICA, P RAY	1/	34
5009	CRIMINAL LAW	1	3.9	3.0	3.0	11.7	AVALOS, L	3/	68
5015	LEGAL TRADITIONS & SY	4	3.2	3.0	3.0	9.6	RYAN, CLARE	11/	34 T
5021	LEGAL RESEARCH & WRIT	1	3.8	2.0	2.0	7.6	SIMINO, KATHY F		
SEC RNK	7/ 68	SEMESTER		16.0	17.0	55.6	3.475		
CLS RNK	29/205 TIE	LSU SYSTEM		16.0	17.0	55.6	3.475		
		CUMULATIVE		16.0	17.0	55.6	3.475		

LOUISIANA STATE UNIVERSITY SPRING SEM 2021 L 1 JDCL									
5002	OBLIGATIONS	1	3.6	3.0	3.0	10.8	LONEGRASS, M	8/	67 T
5006	CIVIL LAW PROPERTY	1	3.7	3.0	3.0	11.1	SMITH, GREG	7/	66 T
5008	CONSTITUTIONAL LAW I	1	3.6	3.0	3.0	10.8	DEVLIN, JOHN	11/	66 T
5010	ADMIN CRIMINAL JUSTIC	1	3.9	3.0	3.0	11.7	SULLIVAN, SCOTT	2/	66 T
5017	BASIC CIVIL PROC II	1	3.6	2.0	2.0	7.2	LAMONICA, P RAY	6/	66 T
5022	LEGAL RESEARCH & WRIT	1	3.7	2.0	2.0	7.4	SIMINO, KATHY F		
SEC RNK	3/ 65	SEMESTER		16.0	16.0	59.0	3.687		
CLS RNK	12/195	LSU SYSTEM		32.0	33.0	114.6	3.581		
		CUMULATIVE		32.0	33.0	114.6	3.581		

LOUISIANA STATE UNIVERSITY SUMMER SEM 2021 L 2 JDCL									
5605	EVIDENCE	1	3.2	3.0	3.0	9.6	DEVLIN, JOHN	20/	50
		SEMESTER		3.0	3.0	9.6	3.200		
		LSU SYSTEM		35.0	36.0	124.2	3.548		
		CUMULATIVE		35.0	36.0	124.2	3.548		

LOUISIANA STATE UNIVERSITY FALL SEM 2021 L 2 JDCL									
5204	SALES & REAL ESTATE T	1	2.9	3.0	3.0	8.7	LONEGRASS, M	29/	74 T
5300	BUS ASSOCIATIONS I	1	3.8	3.0	3.0	11.4	SAUTTER, C	3/	85 T
5434	INTRO TO INTELLECTUAL	1	4.0	3.0	3.0	12.0	LOCKRIDGE, LEE	1/	48
5501	INCOME TAXATION I	1	3.2	3.0	3.0	9.6	CARTER, E. R.	41/	121 T
5701	LA CIVIL PROCEDURE I	1	3.5	3.0	3.0	10.5	CORBETT, WM	8/	37 T
5897	ENERGY LAW JOURNAL JR	1	P		1.0		HALL, KEITH B		
		SEMESTER		15.0	16.0	52.2	3.480		
		LSU SYSTEM		50.0	52.0	176.4	3.528		
		CUMULATIVE		50.0	52.0	176.4	3.528		

PAGE 1 (CONT)

ISSUED 01/13/2023 TO:

JOSHUA PRUETT  
REFNUM: 20094274883

*Clayton Benton*

Clayton F. Benton, University Registrar

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LOUISIANA STATE UNIVERSITY AND A & M COLLEGE  
BATON ROUGE, LOUISIANA 70803



OFFICIAL TRANSCRIPT

JOSHUA MICHAEL PRUETT					xxx-xx-5730				
CRSE	COURSE TITLE	SEC	GR	HRC	HRE	QPTS	PROF	CRS	RNK
LOUISIANA STATE UNIVERSITY									
SPRING SEM 2022 L 2 JDCL									
5208	FAMILY LAW: OF PERSON	1	3.4	3.0	3.0	10.2	RYAN, CLARE	13/	74 T
5220	ENERGY LAW AND REGULA	1	4.0	3.0	3.0	12.0	HALL, KEITH B	1/	42 T
5402	ADMINISTRATIVE LAW	1	3.6	3.0	3.0	10.8	BRYNER, N	10/	56 T
5421	CONSTITUTIONAL LAW II	1	3.3	3.0	3.0	9.9	GALLIGAN, T	28/	84 T
5509	PATENT LAW	1	4.0	2.0	2.0	8.0	EBRAHIM, TABREZ		
5721	LEGAL PROFESSION, THE	1	3.3	2.0	2.0	6.6	AVALOS, L	11/	48 T
5901	IND SUPERVISED RES	6	4.0	1.0	1.0	4.0	RICHARDS, EDWAR		
SEMESTER						17.0	17.0	61.5	3.617
LSU SYSTEM						67.0	69.0	237.9	3.550
CLS RNK	18/180	CUMULATIVE				67.0	69.0	237.9	3.550

LOUISIANA STATE UNIVERSITY SUMMER SEM 2022 L 3 JDCL									
RANK ONLY									
				SEMESTER		67.0	69.0	237.9	3.550
				LSU SYSTEM		67.0	69.0	237.9	3.550
CLS RNK 18/180				CUMULATIVE		67.0	69.0	237.9	3.550

LOUISIANA STATE UNIVERSITY FALL SEM 2022 L 3 JDCL									
5205	MINERAL RIGHTS	1	3.8	3.0	3.0	11.4	HALL, KEITH B	6/	48 T
5309	COMMON LAW PROPERTY	1	3.7	3.0	3.0	11.1	GORING, DARLENE	8/	69 T
5530	REAL ESTATE TRANSACTI	1	3.3	3.0	3.0	9.9	GORING, DARLENE	19/	55 T
5708	MERGERS AND ACOUISITI	1	4.0	2.0	2.0	8.0	SAUTTER, C		
5899	ENERGY EDITORIAL BOAR	1	P		1.0		HALL, KEITH B		
5907	FIELD PLACEMENT I:PRA	1	P		3.0		BROOKS, JEFFREY		
				SEMESTER		11.0	15.0	40.4	3.672
				LSU SYSTEM		78.0	84.0	278.3	3.567
CLS RNK 16/176				CUMULATIVE		78.0	84.0	278.3	3.567

LOUISIANA STATE UNIVERSITY SPRING SEM 2023 L 3 JDCL									
5311	COMMON LAW TRUSTS	1	IP	3.0					
5411	INTRO TO ENVIRON LAW	1	IP	3.0					
5462	INTL INTELLECTUAL PRO	1	IP	3.0					
5615	CONSTRUCTION LAW	8	IP	1.0					
5620	CIVIL MEDIATION CLINI	1	IP	3.0					
5705	CONFLICT OF LAWS	1	IP	3.0					
5900	ENERGY EDITORIAL BOAR	1	IP	1.0					
CURRENTLY ENROLLED				17.0					

\*\*\*\*\*END OF ACADEMIC RECORD\*\*\*\*\*

*Clayton F. Benton*

Clayton F. Benton, University Registrar



LOUISIANA STATE UNIVERSITY AND A & M COLLEGE  
BATON ROUGE, LOUISIANA 70803



OFFICIAL TRANSCRIPT

JOSHUA MICHAEL PRUETT xxx-xx-5730  
-----  
CRSE COURSE TITLE SEC GR HRC HRE QPTS PROF CRS RNK  
-----  
AWARDS AND HONORS  
-----

JELR JUNIOR ASSOCIATE 2021-2022  
DEAN'S SCHOLARSHIP 2021-2022

FALL SEM 2020  
DEAN'S SCHOLAR AWARD

SPRING SEM 2021  
PAUL M. HEBERT SCHOLAR AWARD

FALL SEM 2021  
DEAN'S SCHOLAR AWARD

SPRING SEM 2022  
DEAN'S SCHOLAR AWARD

FALL SEM 2022  
PAUL M. HEBERT SCHOLAR AWARD



PAGE 3 (CONT)

*Clayton F. Benton*

Clayton F. Benton, University Registrar

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LOUISIANA STATE UNIVERSITY AND A & M COLLEGE  
BATON ROUGE, LOUISIANA 70803



OFFICIAL TRANSCRIPT

LSU LAW CENTER TRANSCRIPT GUIDE

ABBREVIATIONS

CLS RNK.....CLASS RANKING (L1, L2, L3)  
CRS RNK.....COURSE RANKING (ONLY FOR COURSES WITH  
50 OR MORE STUDENTS; AFTER SUMMER 1993  
RANK COURSES WITH 25 OR MORE STUDENTS;  
'T' BY RANK INDICATES A TIE)  
E.....EXCELLENT  
F.....FAIL  
GR.....GRADE  
HP.....HIGH PASS  
HRC.....HOURS CARRIED  
HRE.....HOURS EARNED  
IP.....IN PROGRESS  
P.....PASS  
PROF.....PROFESSOR  
OPTS.....QUALITY POINTS  
SEC.....SECTION NUMBER  
SEC RNK.....SECTION RANKING (FIRST YEAR STUDENTS ONLY)  
W.....WITHDRAWAL

ADDITIONAL NOTATIONS PRIOR TO 1987

90....PASS (PASS/FAIL COURSE: NO CREDIT CARRIED OR WEIGHTED POINTS)  
91....FAIL (PASS/FAIL COURSE: NO CREDIT CARRIED OR WEIGHTED POINTS)  
92....DEGREE ONLY (NO COURSE WORK TAKEN)  
95....NON-CREDIT COURSE  
96....PERMANENT INCOMPLETE (PI)  
97....AUDIT ONLY (AU)  
99....INCOMPLETE (I)

SUGGESTED SCALE CONVERSION TO LETTER GRADES  
FOR STUDENTS ENTERED PRIOR TO AUGUST 2000

82-89.....A  
76-81.....B  
65-75.....C  
55-64.....D  
54 AND BELOW.....F

ALL GRADES BELOW 45 (INCLUDING 0) ARE AVERAGED AS A 45.

FOR STUDENTS ENTERING AS OF AUGUST 2000

4.0.....88-89	2.9.....77	1.8.....66
3.9.....87	2.8.....76	1.7.....65
3.8.....86	2.7.....75	1.6.....64
3.7.....85	2.6.....74	1.5.....63
3.6.....84	2.5.....73	*1.4.....62
3.5.....83	2.4.....72	*1.3.....61
3.4.....82	2.3.....71	*1.2.....60
3.3.....81	2.2.....70	*1.1.....59
3.2.....80	2.1.....69	*1.0.....58
3.1.....79	2.0.....68	*0.7.....54
3.0.....78	1.9.....67	

ALL GRADES BELOW 1.0 (INCLUDING 0) ARE AVERAGED AS A 0.7.

\* EFFECTIVE FALL 2010

THE FACULTY ELIMINATED THE GRADES OF 0.7 TO 1.2. GRADES OF 1.3 AND 1.4 ARE FAILING GRADES RESULTING IN NO COURSE CREDIT AWARDED.

THE LAW REQUIRES THAT INFORMATION FROM THIS RECORD NOT BE RELEASED TO OTHER PARTIES WITHOUT WRITTEN CONSENT OF THE STUDENT.

*Clayton F. Benton*

Clayton F. Benton, University Registrar

LOUISIANA STATE UNIVERSITY and A & M COLLEGE

Transcript Guide

**CREDITS**

Credits are reported in semester hours and are based on the number of times a course meets per week during the regular semester.

**GRADING SYSTEM 4.0**

A+ = 4.3; A = 4.0; A- = 3.7  
B+ = 3.3; B = 3.0; B- = 2.7  
C+ = 2.3; C = 2.0; C- = 1.7  
D+ = 1.3; D = 1.0; D- = 0.7  
F = 0

**YEAR CLASSIFICATION CODE**

1	Freshman
2	Sophomore
3	Junior
4	Senior
5	Senior-5 year curriculum or Post-Baccalaureate Program
6	Master's Program
7	Doctoral Program

**COURSE NUMBERING SYSTEM**

**Course Level**

Undergraduate- Remedial  
Undergraduate- Freshman  
Undergraduate- Sophomore  
Undergraduate- Junior  
Undergraduate or Graduate- Senior or Graduate  
Graduate- Primary post-baccalaureate professional courses  
Graduate- Exclusively for teachers at the elementary, secondary and junior college levels  
Graduate- Graduate credit only  
Graduate- Research courses exclusively for graduate students, primarily for students working toward the Master's Degree  
Graduate- Research courses exclusively for advanced graduate students, primarily for students working toward the doctoral degree

**GRADES**

A	Satisfactory
B	Satisfactory
C	Satisfactory
D	Passing But Unsatisfactory
F	Failure
P	Passing
I	Incomplete
IP	In Progress
S	Satisfactory (Thesis and Dissertation Research Courses)
U	Unsatisfactory (Thesis and Dissertation Research Courses)
AU	Audit
*WA	Withdrawal Passing
*WB	Withdrawal Passing
*WC	Withdrawal Passing
*WF	Withdrawal Failing
W	Withdrawal
NC	No Credit

\*Beginning 1983 fall semester these grades no longer assigned.

**Effective Sept. 1974**

0001 – 0999  
1000 – 1999  
2000 – 2999  
3000 – 3999  
4000 – 4999  
5000 – 5999  
6000 – 6999

**Prior to Sept. 1974**

1 – 49  
50 – 99  
100 – 199\*  
100 – 199\*  
100 – 199\*

7000 – 7999  
8000 – 8999  
9000 – 9999  
\*Graduate credit for selected courses only.

**SUPPLEMENTARY INFORMATION**

- Separate totals are maintained on students in nondegree programs. These include EXT (Extension); PASS (Program for Adult Special Students); PIP (Professional Improvement Program); PLUS (LSU 25+ Program); and, effective Fall 1987 (1S/1988), NMATL, NMATR, NMATX (Graduate nonmatriculating).
- Effective with the fall 1986 (1S/1987) semester, the School of Social Work falls under the jurisdiction of the Graduate School; all credit earned in social work is included in the graduate totals.
- Transfer credit course numbers with one digit and three asterisks reflect transfer equivalency based on course level only.
- Effective with the fall 2013 (1S/2014) semester, students became eligible for the Grade Exclusion Policy. The policy allows students to retake certain courses and to have the grades from the previous attempts removed from the calculation of the cumulative and LSU GPAs beginning in the semester courses were taken. Previous semesters' GPAs are not recalculated.
- Prior to the fall 2015 (1S/2016) semester, grades were awarded without plus and minus distinctions. The previous grading scale was: 4.0 (A=4; B=3; C=2; D=1; F=0).
- Unless specified, student is entitled to honorable dismissal.

**RECIPIENTS SHOULD LOOK FOR THE FOLLOWING TO VERIFY THAT THE TRANSCRIPT IS OFFICIAL**

- If the student attended LSU in 1983 or thereafter, the transcript is printed on purple security paper.
- The document has a recent date of issue.
- The records submitted are consistent with the person's academic/employment background and with your knowledge of the candidate.
- The candidate is reluctant to have an official transcript sent.

This Academic Transcript from Louisiana State University located in Baton Rouge, LA is being provided to you by Parchment, Inc. Under provisions of, and subject to, the Family Educational Rights and Privacy Act of 1974, Parchment, Inc is acting on behalf of Louisiana State University in facilitating the delivery of academic transcripts from Louisiana State University to other colleges, universities and third parties.

This secure transcript has been delivered electronically by Parchment, Inc in a Portable Document Format (PDF) file. Please be aware that this layout may be slightly different in look than Louisiana State University's printed/mailed copy, however it will contain the identical academic information. Depending on the school and your capabilities, we also can deliver this file as an XML document or an EDI document. Any questions regarding the validity of the information you are receiving should be directed to: Transcript Department, Louisiana State University, 112 Thomas Boyd Hall, Baton Rouge, LA 70803, Tel: (225) 578-1686.

April 6, 2021

# Brigham Young University

Provo, Utah 84602

Page 1

## STUDENT INFORMATION

NAME : Pruett, Joshua M  
BYU ID : 66-465-5189  
BIRTHDATE : Feb 11

## DEGREES AWARDED - BRIGHAM YOUNG UNIVERSITY

DEGREE : BS  
DATE RECEIVED : Apr 2008  
DEPARTMENT : Civil & Environmental Engr  
MAJOR : Civil Engineering  
MINOR : French

DEGREE : MS  
DATE RECEIVED : Dec 2009  
DEPARTMENT : Civil & Environmental Engr  
MAJOR : Civil Engineering

## MEMORANDUM AREA

THESIS: Performance of a Full-Scale Foundation with Fine and Coarse Gravel Backfill Subjected to Static, Cyclic, and Dynamic Lateral Loads

## BYU COURSE WORK

TEACH CRS SEC H COURSE DESCRIPTION SEM HRS GRD

Summer Term 2001  
A HTG 100 104 American Heritage 3.00 A  
PHIL 105H 200 Honors-Reasoning & Writing 3.00 A  
REL A 121 016 Intro to the Book of Mormon 2.00 A  
SEM HR ERN 8.00 HR GRD 8.00 GPA 4.00

Fall Semester 2001  
ENG T 200 001 Global Tech Issues 3.00 A  
MATH 113 001 Calculus 2 4.00 B+  
MUSIC 101 001 Introduction to Music 3.00 A  
PHSCS 121 001 Principles of Physics 1 3.00 A  
PHSCS 191 001 Intro Phas Careers & Rarch 0.50 P  
REL A 122 005 Intro to the Book of Mormon 2.00 A  
SEM HR ERN 15.50 HR GRD 15.00 GPA 3.84

Winter Semester 2002  
CHEM 105 020 General College Chemistry 4.00 B  
MATH 214 003 Calculus of Several Variables 3.00 D  
MATH 343 001 Elementary Linear Algebra 3.00 C  
PHSCS 123 002 Principles of Physics 2 3.00 B  
PHSCS 150 002 Intro Experimental Physics 1 1.00 A-  
REL C 130 003 Sharing the Gospel 2.00 A  
SEM HR ERN 13.00 HR GRD 13.00 GPA 2.98

Fall Semester 2004  
DANCE 180 015 Social Dance, Beginning 0.50 A-

\*\*\* Continued on Next Column \*\*\*

## BYU COURSE WORK

TEACH CRS SEC H COURSE DESCRIPTION SEM HRS GRD

Fall Semester 2004 (CONT.)  
FREN 321 005 Advanced Grammar 3.00 A  
HEPE 129 004 Fitness & Lifestyle Management 2.00 A-  
MATH 112 004 Calculus 1 4.00 A  
MFG 201 001 History of Creativity 1 3.00 A  
REL A 211 003 The New Testament 2.00 A  
SEM HR ERN 14.50 HR GRD 14.50 GPA 3.95

Winter Semester 2005  
FREN 340 003 Intro to Literary Analysis 1 3.00 A  
IAS 201R 017 Cul Survey-Europe 1.00 A  
FREN 217 001 French & Italian Cinema 3.00 A  
MATH 214 005 Calculus of Several Variables 3.00 A  
PBIO 220 001 Human Anatomy 3.00 A  
REL C 324 003 The Doctrine & Covenants 2.00 A  
SEM HR ERN 15.00 HR GRD 15.00 GPA 4.00

Spring Term 2005  
FREN 311R 004 3rd-Year Conversation 2.00 A  
FREN 399R 002 Academic Internship 4.00 A  
SEM HR ERN 6.00 HR GRD 6.00 GPA 4.00

Fall Semester 2005  
CE EN 100A 001 Civil & Environmental Engr Sem 0.50 A  
CE EN 103 001 Engineering Mechanics-Statics 2.00 A  
CE EN 112 001 Engr Draft w/CAD Apps 3.00 A-  
EXSC 191 013 Weight Training, Beginning 0.50 A  
FREN 322 002 Advanced Composition 3.00 A  
MATH 334 003 Ordinary Differential Equation 3.00 A-  
REL C 234 005 LDS Marriage & Family 2.00 B  
SEM HR ERN 14.00 HR GRD 14.00 GPA 3.73

Winter Semester 2006  
MFG 130 001 Modern Manufacturing 3.00 A  
CE EN 100B 001 Civil & Environmental Engr Sem 0.50 A  
CE EN 203 001 Engr Mechanics - Materials 3.00 A  
FREN 341 001 Intro to Literary Analysis 2 3.00 A  
MFG 202 001 History of Creativity 2 3.00 A  
STAT 221 053 Principles of Statistics 3.00 A  
SEM HR ERN 15.50 HR GRD 15.50 GPA 4.00

Spring Term 2006  
CE EN 113 002 Engineering Measurements 3.00 A-  
MMBIO 221 001 General Microbiology 3.00 A  
SEM HR ERN 6.00 HR GRD 6.00 GPA 3.85

\*\*\* Continued on Page 2 \*\*\*

Barry K. Allred, Registrar





April 6, 2021

# Brigham Young University

Provo, Utah 84602

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## STUDENT INFORMATION

NAME : Pruett, Joshua M  
BYU ID : 66-465-5189  
BIRTHDATE : Feb 11

## BYU COURSE WORK

TEACH CRS	SEC	COURSE DESCRIPTION	SEM	GRD
AREA NO.	NO.		HRS	
Fall Semester 2006				
CE EN 270	002	Computational Methods	3.00	A
CE EN 200A	001	Civil & Environmental Engr Sem	0.50	A
CE EN 204	001	Engr Mechanics - Dynamics	3.00	A
ENGL 316	003	Technical Writing	3.00	A
FREN 361	001	French Civilization to 1715	3.00	A
GEOG 330	003	Geology for Engineers	3.00	A
SEM HR ERN	15.50	HR GRD	15.50	GPA 3.94

## Winter Semester 2007

CE EN 332	001	Hydraulics & Fluid Flow Theory	3.00	A
CE EN 361	001	Intro to Transportation Engr	3.00	A
CE EN 200B	001	Civil & Environmental Engr Sem	0.50	A
CE EN 321	001	Structural Analysis	3.00	A
FREN 362	001	French Civilization 1715-Pres	3.00	A
MUSIC 117	001	Basic Guitar Skill	2.00	A
SEM HR ERN	14.50	HR GRD	14.50	GPA 3.88

## Fall Semester 2007

CE EN 431	001	Hydrology	3.00	A
CE EN 498R	008	Directed Studies in CE En	1.50	A
CE EN 498R	007	Directed Studies in CE En	1.50	A
CE EN 565	001	Urban Transportation Planning	3.00	B+
CE EN 300A	001	Civil & Environmental Engr Sem	0.50	A
CE EN 341	001	Elementary Soil Mechanics	3.00	B+
MUSIC 118R	001	Guitar Tech & Lit	2.00	A
SEM HR ERN	14.50	HR GRD	14.50	GPA 3.72

## Winter Semester 2008

CE EN 421	001	Structural Steel Design	3.00	B+
CE EN 505	002	Port Cement Design & Analysis	3.00	A
CE EN 531	001	Hydrologic Modeling	3.00	A
CE EN 300B	001	Civil & Environmental Engr Sem	0.50	A
CE EN 351	001	Environmental Engineering	3.00	A
CE EN 470	001	CE Practice & Design	3.00	A
SEM HR ERN	15.50	HR GRD	15.50	GPA 3.82

## Spring Term 2008

CE EN 542	001	Foundation Engineering	3.00	A-
SEM HR ERN	3.00	HR GRD	3.00	GPA 3.70

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## BYU COURSE WORK

TEACH CRS	SEC	COURSE DESCRIPTION	SEM	GRD
AREA NO.	NO.		HRS	
Fall Semester 2008				
CE EN 508	001	Structural Vibrations	3.00	A-
CE EN 594R	002	Selected Problems in CEE	3.00	A
CE EN 644	001	Adv Foundation Engineering	3.00	A
CE EN 424	001	Reinforced Concrete Design	3.00	A
CE EN 691R	001	Civil Engr Seminar	0.50	A
SEM HR ERN	12.50	HR GRD	12.50	GPA 3.93

## Winter Semester 2009

CE EN 545	001	Geotech Analysis of Earthquake	3.00	A
CE EN 547	001	Seepage & Grdwtr Modeling	3.00	A
GEOG 521	001	Borehole Geophysics & Geology	3.00	A-
CE EN 691R	001	Civil Engr Seminar	0.50	A
SEM HR ERN	9.50	HR GRD	9.50	GPA 3.91

## Fall Semester 2009

CE EN 641	001	Advanced Soil Mechanics	3.00	A
CE EN 563	001	Pavement Design	3.00	A-
CE EN 699R	005	Master's Thesis	6.00	P
SEM HR ERN	12.00	HR GRD	6.00	GPA 3.85

## BYU DEPARTMENTAL EXAMS

FREN 101	20051	First-Year French, Part 1	4.00	A
FREN 102	20051	First-Year French, Part 2	4.00	A
FREN 201	20051	Intermediate French, Part 1	4.00	A
FREN 211R	20051	2nd-Year Conversation	2.00	A
FREN 311R	20051	3rd-Year Conversation	2.00	A
SEM HR ERN	16.00	HR GRD	16.00	GPA 4.00

## BYU GPA SUMMARY

BYU HR ERN	220.50	HR GRD	214.00	GPA 3.84
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## TRANSFER CREDITS ACCEPTED

ADVANCED PLACEMENT				
ENGLISH LITERATURE/COMPOSITION				
AP	100R	AP Credit	37	Score = 4
ENGL	115	College Writing & Reading	3.00	P
MATH	100R	AP Credit	66	Score = 3
AP	110R	College Algebra	1.00	P
MATH	110	Col Algebra & Trig	3.00	P
MATH	111	Score = 3	2.00	P
PHSCS	106	Intro Applied Phys	3.00	P
PHSCS	105	Intro Applied Phys	3.00	P
AP	HR ERN	18.00	HR GRD	0.00

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Barry K. Alfred, Registrar





April 6, 2021

# Brigham Young University

Provo, Utah 84602

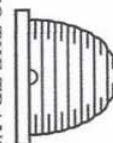
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## STUDENT INFORMATION

NAME : Pruett, Joshua M  
BYU ID : 66-465-5189  
BIRTHDATE : Feb 11  
TRN HR ERN 18.00 HR GRD 0.00  
TOT HR ERN 238.50 HR GRD 214.00  
\*\*\*\*\* End of Transcript \*\*\*\*\*

Barry K. Alfred, Registrar





# KEY TO THE TRANSCRIPT

## 1. Grading and Credit Point System Grade Points

Letter Grade	Description	Grade Points per Unit
A	Excellent	4.0
A-		3.7
B+		3.4
B	Good	3.0
B-		2.7
C+		2.4
C	Satisfactory	2.0
C-		1.7
D+		1.4
D	Minimum Passing	1.0
D-		0.7
E	Failure	0.0
W	Official Withdrawal	*
WE	Withdrawal Failing	0.0
UW	Unofficial Withdrawal	0.0
I	Incomplete	*
IE	Delinquent Incomplete	0.0
T	Course Work in Progress	*
P	Pass	*
NG	Not Graded	*
NS	Grade Not Submitted	*
V	Audit	*
WV	Class Waived	*

\*Not calculated in GPA

Numeric Grades	Description	Numeric Grades
80-90	Superior	3.7 - 4.0
75-79	Excellent	3.4 - 3.6
71-74	High Pass	3.0 - 3.3
66-70	Pass	2.7 - 2.9
59-65	Low Pass	2.2 - 2.6
50-58	Failing	1.0 - 2.1

NOTE: Grade point average is calculated separately for letter and numeric grades.

## 2. RPT by a class

Indicates the class was repeated in a subsequent semester/term and that the class was taken out of the GPA calculation.

## 3. Credit Hours

All credit hours on the BYU transcript are computed in semester hours. All transfer or BYU courses taken on the quarter system are converted to semester hours. A semester hour represents one recitation each week for a period of 16 weeks (or its equivalent).

## 4. Earned vs. Graded Credits

Earned credits = credits that count toward graduation  
Graded credits = credits for which grades are calculated into the GPA

## 5. Course Numbering System

Years	Preparatory & Remedial	Lower Div.	Upper Div.	Grad/Adv Undergrad.	Grad.
Prior to 1948/49		1 - 49	50 - 99		100+
1948/49 to Summer 1957		1 - 99	100 - 199		200+
1957/58 to Present	1 - 99	100 - 299	300 - 499	500 - 599	600+

## 6. Class Standing

Students are classified on the basis of hours completed. The classification is as follows:

Credit Hours Earned	Classification
1 - 29.9	Freshman
30.0 - 59.9	Sophomore
60.0 - 89.9	Junior
90 and over	Senior

7. Honors courses, indicated with an "H", are smaller, intensive classes focusing on writing and discussion taught by some of the university's finest faculty. Most of these courses fulfill university core requirements.

## 8. Approximate Semester Start and End Dates

Semester/Term	Date
Winter	Jan - Apr
Spring	Apr - Jun
Summer	Jun - Aug
Fall	Sept - Dec

9. For enrollment policies refer to <http://catalog.byu.edu>.

## 10. Transfer Credit

The name of transfer institutions the student has attended are noted on the BYU transcript. A summary line indicates the number of credit hours accepted from each institution. Transfer classes, grades, and GPA are not listed.

## 11. Accreditation

BYU is accredited by the Northwest Commission on Colleges and Universities. This accreditation covers all programs and courses offered by Brigham Young University. See BYU General Catalog for a list of other specialized accreditations.

## 12. Confidentiality of Records

This transcript must not be released to a third party without written authorization of the student. This is in accordance with the Family Educational Rights and Privacy Act of 1974. Alteration of this transcript may be a criminal offense.

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Revision Date: Feb. 12, 2017

BYU Registrar's Office • B-150 ASB • Provo, UT 84602 • (801) 422-2631 • <http://registrar.byu.edu>

School Code: 003670



Faculty

March 6, 2023

Honorable Irma C. Ramirez  
Northern District of Texas  
1100 Commerce Street  
Dallas, TX 75242

Dear Magistrate Judge Ramirez:

Joshua Pruett asked me to write in support of his clerkship application. I have a favorable opinion of Mr. Pruett, so I am pleased to be able to do so.

I have known Mr. Pruett for some time. I was involved with him in some service opportunities before he became a law student, and I was pleased to learn of his interest in becoming a lawyer. I thought that his real-world experience as an engineer would ultimately be helpful to him in a legal career, because it would give him perspectives on business, work, institutions, and client needs that most law students (and new lawyers) do not have.

Mr. Pruett was a student in my civil law property class in the spring of 2021. He was an outstanding student. Not only did he earn a high grade (a 3.7), but he added lots of value to our class discussions. He was able to draw on his engineering work in ways that helped his classmates better understand some of the difficult property cases that we studied. He was well-prepared for class, he frequently volunteered to participate in our discussions, and he invariably had good and thoughtful things to say. I very much appreciated his contributions.

Mr. Pruett was very interested in what we were studying. He would often connect with me after class to go deeper into a property law rule or concept. He did this more than any other student in the class.

Now Mr. Pruett would like to be a judicial clerk. Having been one of those myself, many years ago, I have some appreciation for the value of the experience. I think Mr. Pruett would be an excellent clerk. He would bring diligence, intellectual curiosity, and intelligence to the work. He would also bring more maturity and experience to the work than most candidates for these positions typically offer. And he would bring a good personality with him, which is always a good thing to have in a workplace environment.

Very truly yours,

A handwritten signature in blue ink that reads "Greg Smith". The signature is fluid and cursive, with the first name "Greg" and last name "Smith" clearly distinguishable.

N. Gregory Smith  
Emeritus Professor of Law  
Louisiana State University

February 19, 2023

The Honorable Irma Ramirez  
Earle Cabell Federal Building and  
United States Courthouse  
1100 Commerce Street, Room 1567  
Dallas, TX 75242

Dear Judge Ramirez:

I am writing to support the application of Josh Pruett for a clerkship in your court. Mr. Pruett is an excellent student and a hard worker. He will be an exemplary law clerk. I recommend him without reservation.

I worked closely with Mr. Pruett as the faculty advisor on his Journal of Energy Law note. Mr. Pruett is a mature student who entered law school after a decade's work experience as an engineer. He wrote on the problem of toxic waste spills caused by hurricane surge flooding. I was chosen as his supervisor because I have technical and legal knowledge in this area.

Mr. Pruett has strong legal research skills combined with the ability to tease out the issues involved in applying complex statutes to difficult legal problems. His note focused on state and private enforcement of the provisions in RCRA and the Clean Water Act that apply to the management and prevention of toxic spills during hurricane-driven flooding. After we would discuss aspects of this problem, Mr. Pruett would translate the discussion into a detailed written legal analysis of the problem. Mr. Pruett writes clearly, and he explains the law and facts so that his article can be ready by non-specialists.

Mr. Pruett is interested in the judicial process as well as law practice. I believe this will make him an outstanding law clerk and ultimately an excellent lawyer.

Edward P. Richards, JD, MPH  
Director: LSU Law Center Climate Change Law and Policy Project  
Clarence W. Edwards Professor of Law  
John P. Laborde Endowed Professorship in Energy Law  
LSU Law School

Edward Richards - richards@lsu.edu



# KEAN|MILLER<sub>LLP</sub>

October 10, 2022

## MEMORANDUM

TO: G. Trippe Hawthorne  
FROM: Joshua Pruett  
RE: Arbitrator incapacitated between hearing and issue of ruling  
000001.000019

### ISSUES & SHORT ANSWERS

1. Whether a replacement arbitrator in a one-arbitrator matter must require that the evidentiary/arbitration hearing be presented again when the original arbitrator is incapacitated after the hearing but before issuing the ruling.

Short Answer: Probably no. As with all arbitration, the terms of the parties' agreement will dictate how to proceed when the arbitrator is incapacitated. However, if the agreement is silent on the matter, it may be up to the replacement arbitrator or the court/arbitration organization overseeing the proceedings to determine whether to repeat any hearings. In this case, the progress of the proceedings and the amount of information available to the replacement will likely influence the decision to reboot the hearings. As a result, the parties, the court, and the replacement may decide to rehear the matter, but few authorities mandate such a result.

2. When one arbitrator in a three-arbitrator panel is incapacitated after the hearing but before the award, can the remaining arbitrators proceed with the judgment (assuming they can agree) or are they required to start over with a replacement arbitrator? What do the relevant rules/laws require if the incapacity occurs during, not after, the hearing?

Short Answer: Probably yes. Arbitration organization rules generally provide the remaining panel members discretion to continue and conclude the arbitration without replacing the incapacitated panel member, with some exceptions. The rules governing vacancies during the proceedings generally overlap with the rules governing vacancy between the hearing and the ruling.

### DISCUSSION

1. The replacement arbitrator in a one-arbitrator matter may have discretion to require repeating hearings when the original arbitrator is incapacitated after the hearing but before issuing the ruling.

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“[A]rbitration is a creature of contract.”<sup>1</sup> The parties “are free to include provisions in conflict with certain provisions of rules incorporated by reference.”<sup>2</sup> Many arbitration rules are written broadly enough to accommodate incapacity of an arbitrator when the proceedings are overseen by one or several arbitrators. For example, the International Institute for Conflict Prevention & Resolution, Inc. (CPR) specifically provided guidance for single arbitrator vacancy after the hearings have commenced in Chapter Seven of CPR’s Administered Arbitration Rules:

7.9 In the event of death, resignation or successful challenge of an arbitrator not designated by a party, a substitute arbitrator shall be selected pursuant to the procedure by which the arbitrator being replaced was selected. . . .

7.10 In the event that an arbitrator fails to act or is de jure or de facto prevented from duly performing the functions of an arbitrator, the procedures provided in Rule 7.9 shall apply to the selection of a replacement. . . .

**7.11 If the sole arbitrator or the chair of the Tribunal is replaced, the successor shall decide the extent to which any hearings held previously shall be repeated.**<sup>3</sup>

CPR lets the replacement arbitrator decide how much of the arbitration proceedings to repeat. It makes sense to let the replacement arbitrator, who may have the least knowledge of the matter being arbitrated, determine how much of the matter needs to be reheard so he or she can conclude the arbitration. In the 2006 edition of its rules, The International Centre for Settlement Disputes (ICSID) provided that “a vacancy resulting from the disqualification, death, incapacity or resignation of an arbitrator shall be promptly filled by the same method by which his appointment had been made.”<sup>4</sup> Under ICSID rules, “as soon as a vacancy on the Tribunal has been filled, the proceeding shall continue from the point it had reached at the time the vacancy occurred. The newly appointed arbitrator may, however, require that the oral procedure be recommenced, if

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<sup>1</sup> *Szuts v. Dean Witter Reynolds, Inc.*, 931 F.2d 830, 831 (11th Cir. 1991).

<sup>2</sup> *Id.*

<sup>3</sup> International Institute for Conflict Prevention & Resolution, Inc., Administered Arbitration Rules (Mar. 1, 2019) (emphasis added).

<sup>4</sup> International Centre for Settlement of Investment Disputes, Arbitration (Additional Facility) Rules (2006), Article 17(1). Please note that ICSID recently issued the 2022 version of its Convention and Rules.

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this had already been started.”<sup>5</sup> The ICSID Convention and Rules allows a panel or tribunal of arbitrators to consist of only one arbitrator, based on the parties’ agreement.<sup>6</sup>

States that follow the Revised Uniform Arbitration Act (RUAA) generally provide for the replacement of a sole arbitrator. For example, Colorado arbitration law provides:

An arbitrator may conduct an arbitration in a manner that the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. . . .

If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator shall be appointed in accordance with section 13-22-211 to continue the proceeding and to resolve the controversy.<sup>7</sup>

Some states have specialized arbitration rules for specific types of arbitration. For example, North Carolina’s rules governing international commercial arbitration provide that, unless the parties agree otherwise, “[w]here the number of arbitrators is less than three and an arbitrator is replaced, any hearings previously held shall be repeated.”<sup>8</sup> In addition, some arbitration organizations have changed earlier provisions that required the replacement arbitrator to rehear the matter. For example, in *Loomis, Inc. v. Cudahy*, 104 Idaho 106, 656 P.2d 1359 (Ida. 1982), the court quotes the American Arbitration Association (AAA) Construction Industry Arbitration Rules as saying “If any arbitrator should resign, die, withdraw, refuse, be disqualified or be unable to perform the duties of office, the AAA shall, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these Rules and the matter shall be reheard unless the parties shall agree otherwise.”<sup>9</sup> However, the modern rule states:

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<sup>5</sup> ICSID, Arbitration (Additional Facility) Rules (2006), Article 18. Note that the 2022 amendment did not include language for resuming proceedings after replacing an arbitrator.

<sup>6</sup> ICSID, Arbitration (Additional Facility) Rules (2006), Article 6(3) (“The Tribunal shall consist of a sole arbitrator or any uneven number of arbitrators appointed as the parties shall agree.”). However, the default number of arbitrators is three. *See* ICSID, Arbitration (Additional Facility) Rules (2006), Article 6(1).

<sup>7</sup> Colo. Rev Stat § 13-22-215 (2016). *See also, e.g.*, Ariz. Rev. Stat. § 12-3015; Fla. Stat. § 682.06; Nev. Rev. Stat. 38.231; N.J. Stat. 2A:23B-15; 42 Pa. Cons. Stat. § 7321.16; W. Va. Code, § 55-10-17.

<sup>8</sup> N.C. Gen. Stat. § 1-567.45(b)(1).

<sup>9</sup> *Loomis, Inc. v. Cudahy*, 104 Idaho 106, 126, 656 P.2d 1359, 1379 (1982), quoting AAA, Construction Industry Arbitration Rules, Section 20.

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(a) If for any reason an arbitrator is unable or unwilling to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these Rules.

(b) In the event of a vacancy in a panel of neutral arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.

(c) In the event of the appointment of a substitute arbitrator, the panel of arbitrators shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.<sup>10</sup>

The above rule is largely directed at multiple arbitrator panels, but it may be interpreted to apply to a sole arbitrator as well. The modern rule leaves the decision of whether and what to repeat to the reconstituted panel (or replacement arbitrator). The Federal Arbitration Act (FAA) also provides for replacing an arbitrator after hearings have commenced:

If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, **or in filling a vacancy**, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; **and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.**<sup>11</sup>

The U.S. Court of Appeals for the Seventh Circuit expounded on the above provision in *WellPoint, Inc. v. John Hancock Life Ins. Co.*, 576 F.3d 643 (7th Cir. 2009):

Section 5 anticipates the problem of a vacancy after the arbitration is underway, and it also anticipates the possibility that the parties may not have set forth a method for filling that vacancy. In such a

<sup>10</sup> AAA, Construction Industry Rules and Mediation Procedures (May 1, 2022), R-22. AAA's "Consumer" and "Employment" arbitration rules have near-identical language. *See* AAA, Consumer Arbitration Rules (Sep. 1, 2014), Rule 20; AAA, Employment Arbitration Rules and Mediation Procedures (Nov. 1, 2009), Rule 18.

<sup>11</sup> 9 U.S.C. § 5.